Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 772

H. P. HOOD & SONS, INC., AND NOBLE'S MILK COMPANY, PETITIONERS,

128.

THE UNITED STATES OF AMERICA AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE

PETITION FOR CERTIORARI FILED MARCH 24, f939. CERTIORARI GRANTED MARCH 27, 1939.

No. 865

E: FRANK BRANON, PETITIONER,

228

THE UNITED STATES OF AMERICA AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE

PETITION FOR CERTIORARI FILED APRIL 12, 1939. CERTIORARI GRANTED APRIL 17, 1939.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3445.

H. P. HOOD & SONS, Inc., ET AL.,

DEFENDANTS, APPELLANTS,

UNITED STATES OF AMERICA ET AL.,

PLAINTIFFS, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS, FROM FINAL DECREE (SWEENEY, J.), MARCH 9, 1939.

TRANSCRIPT OF RECORD.

VOLUME 1.
PLEADINGS.

CHARLES B. RUGG, ROPES, GRAY, BOYDEN & PERKINS, EDWARD L. MERRILL, MERRILL & MERRILL,

for Appellants.

HUGH B. COX, JAMES C. WILSON,

SPECIAL ASSISTANTS TO THE ATTORNEY GENERAL,

for Appellees.



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VOLUME II., REPORT OF SPECIAL MASTER (Findings of Fact);
VOLUME IH., REPORT OF SPECIAL MASTER (Exhibits Appended).
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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938,

No. 3445.

H. P. HOOD & SONS, Inc., ET AL., DEFENDANTS, APPELLANTS,

UNITED STATES OF AMERICA ET AL., PLAINTIFFS, APPELLEES.

TRANSCRIPT OF RECORD OF DISTRICT COURT.

No. 4519, EQUITY DOCKET.

UNITED STATES OF AMERICA AND HENRY A WALLACE,
SECRETARY OF AGRICULTURE, PLAINTIFFS,

H. P. HOOD & SONS, INC., AND NOBLE'S MILK COMPANY (SUBSTITUTED FOR NOBLE'S MILK, INC.), DEFENDANTS.

The bill of complaint in this cause was filed in the clerk's office on the first day of October, A. D. 1937, and was duly entered at September Term of this court, A. D. 1937.

Upon the filing of the bill of complaint, an order to show cause was issued being made returnable on the twenty-ninth day of October,

A. D. 1937, or ten o'clock A. M.

At the same term to wit, October 21, 1937, a plaintiff's motion to amend the bill of complaint by striking the name of Noble's Milk, Inc., from the bill and substituting in place thereof the name "Noble's Milk Company" is filed.

Said motion was allowed by the court on the same day, the Honor

able George C. Sweeney, District Judge, sitting, and the following First Amended Bill of Complaint was filed:

FIRST AMENDED BILL OF COMPLAINT. [Filed October 21, 1937.]

Plaintiffs, by Francis J. W. Ford, United States Attorney, in and for the District of Massachusetts, acting under the direction of the Attorney General, at the request of the Secretary of Agriculture, bring this first amended bill of complaint and allege:

1. Plaintiff Henry A. Wallace is the Secretary of Agriculture of the United States (hereinafter referred to as the "Secretary") and joins in this action in the discharge of his official duties and in the public interest.

2. The defendant H. P. Hood & Sons, Inc. is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, and has its principal place of business at 500 Rutherford Avenue in the City of Boston in said Commonwealth.

- 2a. The defendant Noble's Milk Company is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, and has its principal place of business at 500 Rutherford Avenue in the city of Boston in said Commonwealth. The plaintiffs are informed and believe that the defendant Noble's Milk Company is a subsidiary of, and is controlled and dominated by, defendant H. P. Hood & Sons, Inc.
- 3. This proceeding is brought under Section 8a (6) of the Act of May 12, 1933 (48 Stat. 31; 7 U.S.C.A., Section 6078a (6), as amended August 24, 1935 (49 Stat. 672), and as reenacted and amended in the Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public No. 137, 75th Congress) (the said Act of May 12, 1933, as reenacted and amended being hereinafter referred to as the "Act"), investing the several district courts of the United States with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order issued by the Secretary pursuant to the provisions of Title I of said Act. A copy of the pertinent provisions of the Act, marked "Exhibit A", is attached hereto and made a part hereof.

4. Pursuant to the provisions of Sections 8b and 8c (3) of the Act, the Secretary, on November 30, 1935, gave notice of a public hearing on a proposed marketing agreement and a proposed order regulating the handling of milk in the area which includes the territory within the boundary lines of the cities and towns of Arlington, Belmont Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham, Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Winchester, Winthrop, and Woburn, all in the Commonwealth of Massachusetts (the said area being hereinafter referred to as the Boston Area).

5. In accordance with the terms of the said notice, a public hearing was held on December 10 and 11, 1935, at St. Johnsbury, Vermont, and on December 12, 1935, at Boston, Massachusetts, at which times and places all interested parties were afforded an opportunity to be heard on the proposed marketing agreement and the proposed order. The said hearing was attended by representatives of producers, handlers, and consumers of milk sold in the Boston Area.

6. Upon evidence adduced at the said hearing the Secretary of Agriculture made all of the findings required by the applicable provisions of the Act and, the President having approved the findings made by the Secretary pursuant to the provisions of Section 8c (9) of the Act, the Secretary, in accordance with the provisions of Section 8c (1) (2), (4), and (9) of the Act, issued Order No. 4 regulating the handling of milk in the Boston Area, effective February 9, 1936, the said order containing terms and conditions authorized by the applicable provisions of the Act and no others. A copy of the said order, marked "Exhibit B", is attached hereto and made a part hereof.

7. The purpose of said Order No. 4 is to promote, foster, and protect commerce in milk among the states and to effectuate the declared policy of the Act by establishing and maintaining such orderly marketing conditions as will reestablish prices to be paid to producers of milk and cream for the Boston Area at a level which will give those products a purchasing power with respect to articles that

producers buy equivalent to the purchasing power of those commodities during the base period fixed by the order.

. 8. The said Order No. 4 was approved and favored by more than 75 percent of the producers who, during the representative month of November 1935, had been engaged in the production of milk for sale in the Boston Area.

9. The said Order No. 4 was continuously in effect from the effective date thereof until August 1, 1936, when the Secretary pursuant to authority vested in him by the provisions of the Act and the applicable general regulations thereunder, suspended the further operation of the said order. A copy of the order suspending the said Order No. 4 is attached hereto, marked "Exhibit C", and made

a part hereof...

10. On June 25, 1937, the Acting Secretary of Agriculture, pursuant to the authority vested in him by the provisions of the Act and the applicable general regulations thereunder, terminated the said order of suspension, effective July 1, 1937, relative to the following provisions of said Order No. 4: Article I, Article II, Article III, Article V, Article VI—Section 1, Article XII, Article XIII, Article XIV, Article XV, Article XVI. A copy of the order terminating the order suspending the said Order No. 4 is attached hereto, marked "Exhibit D", and made a part hereof.

11. On June 24, 1937, the Secretary of Agriculture, pursuant to Sections 8c (3) and 8c (17) of the Act, gave notice of a public hearing on a proposed amendment to Order No. 4, and, in accordance with the terms of the said notice, the said public hearing on the proposed amendment to said Order No. 4 was held at St. Johnsbury, Vermont, on June 30, 1937; at Boston, Massachusetts, on July 1, 1937, and at Augusta, Maine, on July 2, 1937, at which places and times all interested parties were afforded an opportunity to be heard on the proposed amendment. The said public hearing was attended by representatives of producers, handlers, and consumers of milk sold in the Boston Area.

12. Upon the evidence adduced at the said hearing, the Secretary made all the findings required by the applicable provisions of the Act, and, in accordance with the provisions of Section 8c (1), (2), (4),

(9), and (17) of the Act, issued an amendment to said Order No. 4, effective August 1, 1937." (The said Order No. 4 and the said amendment are hereinafter collectively referred to as the "Order as amended".) The said amendment contains terms and conditions authorized by the applicable provisions of the Act and no others. A copy of said Order as amended, marked "Exhibit E", is attached hereto and made a part hereof.

13. The said amendment to Order No. 4 was favored and approved by more than 72 percent of the producers who, during the representative month of May, 1937, had been engaged in the production of milk for sale in the Boston Area and who voted at a referendum conducted by the Secretary pursuant to Section 8c (19) of the Act.

14. The Order as amended has been continuously in effect from the effective date thereof to and including the date of the filing of this bill of complaint.

15. During the year ending August 28, 1937, approximately 88 percent of the milk and 99.8 percent of the cream used in the Boston Area was imported from other states. During the same period, 54 percent of all the milk brought into the Boston Area originated in Vermont, 15 percent originated in Maine, 10 percent originated in New Hampshire, 8 percent originated in New York, 1 percent originated in Rhode Island. Only 12 percent originated in Massachusetts, of which less than two percent was handled by handlers dealing exclusively in milk produced in Massachusetts. Cream was received in the Boston Area during 1936 from 16 states. Vermont supplied 41 percent of the total quantity; Michigan, 14 percent; New York, 11 percent; only .2 percent originated in Massachusetts.

16. The defendant H. P. Hood & Sons, Inc. is engaged in the business of receiving, buying, processing, selling, and distributing milk, and is a 'handler' of milk as defined in Section 8c (1) of the Act and in Paragraph 6 of Section 1 of Article I of the Order as amended, and as such is subject to the applicable provisions of the Act and of the Order as amended. The defendant Noble's Milk Company is also engaged in the business of receiving, buying, processing, and selling milk and is a "handler" of milk as defined in Section 8c (1) of the Act and in Paragraph 6 of Section 1 of Article

I of the Order as amended and as such is subject to the applicable provisions of the Act and of the Order as amended.

17. The defendant H. P. Hood & Sons, Inc. purchases milk from producers located in the States of Maine, New Hampshire; Vermont, and New York; the milk is transported in interstate commerce to the distributing plant of the defendant corporation in Boston, and there is processed and then distributed and sold by the said defendant in the Boston Area. The defendant corporation operates receiving stations at Auburn, West Farmington, Unity, and Belfast, all in the State of Maine; at Colbrook, West Canaan, and Lancaster, all in the State of New Hampshire; at Barnett, Plainfield, Barton, Hardwick, Orleans, Newport, Fairfield, St. Albans, and Sheldon Junction, all in the State of Vermont; and at Eagle Bridge and Salem in the State of New York. The defendant corporation also purchases milk from producers located within the Commonwealth of Massachusetts and processes and distributes and sells the said milk in the Boston Area. In the delivery period August 1 to August 15, 1937, the defendant corporation purchased milk from a total of 3186 producers. Of this total, 902 delivered to plants located in the State of Maine; 473 to plants located in the State of New York; 1367 to plants located in the State of Vermont; 371 to plants located in the State of New Hampshire; and 73 to the plant in the Commonwealth of Massachusetts. From time to time the defendant corporation also purchases from other handlers, and distributes and sells in the Boston Area, milk which has been received by the said handlers from producers located outside the Commonwealth of Massachusetts and transported in interstate commerce into the Boston Area. In the delivery period August 1 to August 15, 1937, the defendant handled 10,332,774 pounds of milk in the Boston Area.

The defendant Noble's Milk Company purchases milk from producers located in the State of Vermont; the milk is transported in interstate commerce into the Commonwealth of Massachusetts, where it is sold to the defendant H. P. Hood & Sons, Inc. The said milk is then processed by the defendant H. P. Hood & Sons, Inc. and distributed and sold in the Boston Area. The defendant Noble's Milk Company also purchases milk from producers located in the Com-

monwe Ith of Massachusetts and sells the said milk to the defendant H. P. Hood & Sons, Inc., which processes the said milk and distributes and sells it in the Boston Area. During the period August 1 to August 15, 1937, the defendant Noble's Milk Company handled 585,724 pounds of milk in the Boston Area.

18. Each of the defendant corporations has been, since the effective date of the Order as amended, and now is, a competitor of all other handlers of milk in the Boston Area, and all of the milk handled by each of the defendant corporations in the Boston Area since the effective date of the Order as amended, has been handled in competition with milk which is purchased outside the Commonwealth of Massachusetts, transported in interstate commerce to distributing plants within the said Commonwealth, and then distributed and sold in the Boston Area. All of the handling of milk in the Boston Area by the defendant corporations is in the current of interstate commerce, as defined in Section 10 (j) of the Act, and directly burdens, obstructs, or affects interstate commerce in milk and its products.

19. Milk is an article of diet which is of great importance to public health, and it is imperative that a reliable and adequate supply of milk be maintained. The consumers in the Boston Area are completely dependent upon milk producers outside of Massachusetts for a steady flow of milk. To assure a continuous reliable supply, milk producers shipping into the Boston Area, numbering approximately 18,000, must be paid fair and reasonable prices for their milk.

20. Maine, New Hampshire, Vermont, and Massachusetts supply practically all of the milk marketed in the Boston Area. Milk production is a substantial source of farm cash income in Maine, New Hampshire, Vermont, and Massachusetts. In 1935 the cash farm income from milk sold from farms in Maine represented 24 percent of the total farm cash income; in New Hampshire 44 percent; in Vermont, 67 percent; in Massachusetts, 38 percent.

21. From 1929 to 1933 the prices for wholesale milk received by producers in Vermont, New Hampshire, Maine and Massachusetts declined steadily and substantially. In 1936, when the said Order No. 4 was issued, the farm price for wholesale milk in Vermont was

34 percent below the 1929 level, in New Hampshire 31 percent, in Maine 29 percent, and in Massachusetts 18 percent.

22. In accordance with long established practice in the milk industry in the United States, including the Boston Area, the Order as amended classifies milk according to the use for which the milk is sold and fixes a price for each classification. All milk sold or distributed by handlers as whole milk, chocolate milk, of flavored milk is designated as Class I milk and bears a higher price than milk sold, distributed, or disposed of for other uses, the latter being designated as Class II milk. The Order as amended provides for payments to the producers of milk in substantially the following manner: The aggregate value of all milk delivered to handlers for sale in the Boston Area is calculated on the use basis, that is on the basis of the Class I price for Class I milk and the Class II price for Class II milk. The aggregate amount so calculated is distributed to producers on. the basis of a so-called "blended price", which represents a blend of the value of both classes of milk and accordingly is less than the Class I price but more than the Class II price This blended price is paid uniformly to all producers subject to certain location differentials which are set forth in the Order as amended. The handlers are required to add to the blended price the market value of that part of the butterfat content of milk which is in excess of 3.7 percent or are allowed to deduct from the blended price the market value of the amount of butterfat which it would be necessary to add to the milk to give it a butterfat content of 3.7 percent. Under the Order the blended price is a minimum price and handlers are permitted to pay producers more than the blended price.

23. The result of the method of payment described in paragraph 22 above is that a handler with relatively large Class I sales by paying to his producers the blended price pays them a sum which is less than the total use value of the milk handled by him, while a handler with relatively small Class I sales by paying to his producers the blended price pays them more than the use value of the milk handled by him. To adjust the differences, paragraph 3 of Section 1 of Article VIII of the Order as amended provides that the difference between the use value of the milk of each handler and the amount he pays to pro-

ducers be paid to or received from, the market administrator who acts as agent for this clearing arrangement. This clearing arrangement does not increase or decrease the cost of milk to any handler.

- 24. By the provisions of said Paragraph 3 of Section 1 of Article VIII of the Order as amended the defendant H. P. Hood & Sons, Inc., is now required and obligated to pay to the market administrator for the delivery period August 1 to August 15, 1937, the amount of \$30,703.03, which said amount is now due and owing; and for the delivery period August 16 to August 31, 1937, the amount of \$32,487.42, which said amount is now due and owing: The said defendant has failed and refused to pay the said amount of \$30,703.03 and \$32,487.42 and has violated and now is violating said Paragraph 3 of Section 1 of Article VIII of the Order as amended. The plaintiffs are informed and believe that the defendant H. P. Hood & Sons, Inc., unless enjoined, will continue to violate said Paragraph 3 of Section 1 of Article VIII by failing and refusing to make the payments to producers as required by the said Paragraph 3 of Section 1 of Article VIII.
- 25. By the provisions of said Paragraph 3 of Section 1 of Article VIII of the Order as amended the defendant Noble's Milk Company is required and obligated to pay to the market administrator for the delivery period August 1 to August 15, 1937, the amount of \$1,823.81, which said amount is now due and owing, and for the delivery period August 16 to August 31, 1937, the amount of \$1,957.34, which said amount is now due and owing. The said defendant has failed and refused to pay the said amounts of \$1,823.81 and \$1,957.34 and has violated and now is violating said Paragraph 3 of Section 1 of Article VIII of the Order as amended. The plaintiffs are informed and believe that the said defendant Noble's Milk Company, unless enjoined, will continue to violate said Paragraph 3 of Section 1 of Article VIII by failing and refusing to make the payments to producers as required by the said Paragraph 3 of Section 1 of Article VIII of the Order as amended.
- 26. Section 1 of Article X of the Order as amended requires each handler to pay to the market administrator on or before the twenty-fifth day after the end of each delivery period as his pro rata share of the expenses incurred in the administration of the Order as amended

not more than 2 cents per hundredweight on all milk which is deliv-

ered to him by producers or produced by him.

27: By the said provisions of Section 1 of Article X of the Order as amended, the defendant H. P. Hood & Sons, Inc. is required and obligated to pay to the market administrator for the delivery period of August 1 to August 15, 1937, the amount of \$1,927.50, which said amount is now due and owing, and for the delivery period of August 16 to August 31, 1937, the amount of \$2,008.96 which said amount is now due and owing. The said defendant has failed and refused to pay the said amounts of \$1,927.50 and \$2,008.96 and has violated and now is violating said Section 1 of Article X of the Order as amended. The plaintiffs are informed and believe that the said defendant unless enjoined will continue to violate said Section 1 of Article X of the Order as amended, by failing and refusing to make the payments required by the said Section.

28. By the said provisions of Section 1 of Article X of the Order as amended the defendant Noble's Milk Company is now required and obligated to pay the market administrator for the delivery period August 1 to August 15, 1937, the amount of \$117.14, which said amount is now due and owing, and for the delivery period August 16 to August 31, 1937, the amount of \$120.93, which said amount is now due and owing. The said defendant has failed and refused to pay the said amounts of \$117.14 and \$120.93 and has violated and is now violating said Section 1 of Article X of the Order as amended. The plaintiffs are informed and believe that the said defendant, unless enjoined, will continue to violate said Section 1 of Article X of the Order as amended by failing and refusing to make the payments

required by the said Section.

29. Section 1 of Article IX of the Order as amended provides that, except in the case of milk purchased from producers who are members of a cooperative association, each handler shall deduct not more than 2 cents per hundredweight from payments made direct to producers for all milk handled during each delivery period and shall pay the amount so deducted to the market administrator on or before the twenty-fifth day after the end of such marketing period, to be used by the said market administrator in supplying information and in render-

ing certain valuable services to producers who are not members of a

cooperative association.

30. In the delivery periods August 1 to August 15, 1937, and August 16 to August 31, 1937, the defendant H. P. Hood & Sons, Inc. purchased milk from producers who were not members of a cooperative association, and by the said provisions of Section 1 of Article IX of the Order as amended the said defendant is now required and obligated to pay to the market administrator on account of the milk so purchased in the delivery period August 1 to August 15, 1937, the amount of \$1,900.13, which said amount is now due and owing, and on account of milk so purchased in the delivery period August 16 to August 31, 1937, the amount of \$1,980.67, which said amount is now due and owing. The defendant has failed and refused to pay the said amounts of \$1,900.13 and \$1,980.67 and has violated and now is violating said Section 1 of Article IX of the Order as amended. The plaintiffs are informed and believe that the said defendant, unless enjoined, will continue to violate said Section 1 of Article IX of the Order as amended, by failing and refusing to make the payments required by the said Section.

31. During the delivery periods August 1 to 15, 1937, and August 16 to August 31, 1937, the defendant Noble's Milk Company purchased milk from producers who were not members of a cooperative association, and by the said provisions of Section 1 of Article IX of the Order as amended the said defendant is required and obligated to pay to the market administrator on account of the milk so purchased in the delivery period August 1 to 15, 1937, the amount of \$117.14, which said amount is now due and owing, and on account of the milk so purchased in the delivery period August 16 to August 31, 1937, the amount of \$120.93, which said amount is now due and owing. The said defendant has failed and refused to pay the said amounts of \$117.14 and \$120.93 and has violated and now is violating Section 1 of Article IX of the Order as amended. The plaintiffs are informed and believe that the said defendant, unless enjoined, will continue to violate said Section 1 of Article IX of the Order as amended by failing and refusing to make the payments required by

the said section.

32. The accomplishment of the purposes of the Act and of the Order as amended depends upon the effective and orderly administration and enforcement of the Order as amended, and upon compliance with all of the provisions of the Order as amended by all of the handlers of milk subject to the provisions of the Order as amended. The refusal of the defendants to make the payments required by Paragraph 3 of Section 1 of Article VIII and Section 1 of Article X and Section 1 of Article IX of the Order as amended has made impossible the effective and orderly administration and enforcement of the Order as amended, is now making impossible the effective and orderly enforcement of the Order as amended, and, unless enjoined, will continue to make impossible the orderly and effective administration and enforcement of the Order as amended. Unless the defendants are immediately restrained from continuing to violate the Order as amended and are immediately compelled to comply with all of its provisions, other handlers will be encouraged, or compelled by economic necessity, to refuse to comply with the provisions of the Order as amended, the prices received by producers for milk will be lowered, commerce in milk among the several states will be disrupted, burdened, and obstructed, the lawful regulation of such commerce as provided by Congress in the Act and the Order will be ineffective, the declared policy of Congress will be defeated, and the plaintiffs will suffer irreparable injury.

Wherefore, plaintiffs pray:

1. That the court issue a preliminary injunction preventing and restraining the defendant corporations; their agents, officers, attorneys, employees, successors, and assigns from violating any of the provisions of Order No. 4 as amended, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area during the pendency of this suit.

2. That the court issue a preliminary injunction commanding each of the defendant corporations to pay all amounts now due and owing by it under the provisions of Order No. 4 as amended, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area and commanding each of the defendant corporations, its agents, officers, attorneys, employees, successors, and assigns to

comply with all of the provisions of said Order No. 4 as amended

during the pendency of this suit.

3. That the court issue a permanent injunction preventing and restraining the defendant corporations, their agents, officers, attorneys, employees, successors, and assigns from violating the provisions of Order No. 4 as amended, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area.

4. That the court issue a permanent injunction commanding the defendant corporations, their agents, officers, attorneys, employees, successors, and assigns, to comply with all provisions of Order No. 4 as amended, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area.

5. That the plaintiffs be given all other, further, and different relief as to this court may seem just and proper.

FRANCIS J. W. FORD,

Un. ed States Attorney.

ROBERT H. JACKSON,

Assistant Attorney General.

WENDELL BERGE.

Special Assistant to the Attorney General.

DISTRICT OF COLUMBIA,

CITY OF WASHINGTON, SS.

Paul L. Miller, being first duly sworn, deposes and says that he is Acting Chief of the Dairy Section, Agricultural Adjustment Administration, Department of Agriculture of the United States; that he makes this affidavit on behalf of the plaintiffs in the foregoing bill of complaint; that he has read the foregoing bill and knows the contents thereof; and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

PAUL L. MILLER.

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this twentieth day of October, 1937.

ALFRED L. DORF,

·[SEAL] Notary Public, District of Columbia.

[Memorandum, Copy of "Exhibit A" referred to in the foregoing first amended bill of complaint as annexed is here omitted by consent of counsel. Copies of Exhibits "B", "C", "D" and "E", referred to as annexed to the foregoing first amended bill of complaint are here omitted and will be found printed on pages 9, 36, 40 and 59 respectively in Volume II of this Transcript of record. James S. Allen, Clerk.]

At the same term, to wit, October 29, 1937, on the return day of the summons to show cause, said cause was set down for hearing and was heard by the court on the prayer for preliminary injunction, together with affidavits, the Honorable George C. Sweeney, District Judge, sitting, and was thence taken under advisement.

Also at the same term, to wit, October 29, 1937, the following Petition of E. Frank Branon for Leave to Intervene was filed:

PETITION OF E. FRANK BRANON FOR LEAVE TO INTERVENE AS PARTY DEFENDANT.

· [Filed October 29, 1937.]

Your petitioner E. Frank Branon respectfully alleges and represents as follows:

1. Your petitioner is a resident of the State of Vermont.

He is now and was, on August 1, 1937, and for a long time prior thereto, a regular producer of milk eligible to ship milk to the Greater Boston Massachusetts Marketing Area. As such producer, he sold and delivered milk to H. P. Hood & Sons, Inc., one of the defendants in the above-entitled case, during the delivery period August 1 to August 15, 1937, the delivery period August 16 to August 31, 1937, the delivery period September 1 to September 15, 1937, the delivery period September 16 to September 30, 1937, and the delivery period October 1 to October 15, 1937. Since October 15, 1937, he has and is now continuing to sell and deliver milk to H. P. Hood & Sons, Inc.

2. The above-entitled cause was commenced in this court by the filing of a bill of complaint against the defendants, H. P. Hood & Sons, Inc. and Noble's Milk Company on October 1, 1937. Said bill of complaint is brought to enforce, and to prevent and restrain

the defendants from violating the provisions of Order No. 4 as amended, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area. Among other things, it seeks a preliminary injunction commanding the defendants to pay all amounts now due and owing by each of them under the provisions of said Order, and permanent injunctions restraining each of them from violating any of the provisions of said Order and commanding them to comply with all of said provisions.

3. Your petitioner has an interest in the litigation in the aboveentitled case both against the plaintiffs therein and against the defendant H. P. Hood & Sons, Inc., arising out of the following facts:

For the respective delivery periods from August 1, 1937, to October 15, 1937 inclusive, all sales of milk to the defendant H. P. Hood & Sons, Inc. by all milk producers, including your petitioner, were made in accordance with the terms and conditions expressed in a Plant Notice signed by the defendant H. P. Hood & Sons, Inc., which constituted the contract of sale and purchase under which such producers, including your petitioner, sold their milk to the defendant, H. P. Hood & Sons, Inc., and under which said defendant, H. P. Hood & Sons, Inc., purchased the same from such producers, including your petitioner. Under the terms of said Plant Notice, the defendant, H. P. Hood & Sons, Inc., agreed to pay for all milk delivered by individuals to its plants a fixed sum per hundredweight but in no event less than the prices fixed in Order No. 4 as amended, equalized among producers selling and delivering milk to H. P. Hood & Sons, Inc., that is, in no event less than a sum computed by dividing the total value of milk purchased by the defendant H. P. · Hood & Sons, Inc., on the basis of prices for Class I and Class II milk fixed in Order No. 4, as amended, among producers selling and delivering to the defendant H. P. Hood & Sons, Inc., in proportion to the total deliveries made by each such producer subject to certain differentials. A copy of the Plant Notice for the delivery period August 1 to August 15, is attached hereto, marked "Exhibit A", and made a part hereof. The Plant Notice for the delivery periods August 15 to August 31, September 1 to September 15, September 15 to September 30, and October 1 to October 15, respectively, are identical

in all respects with the Plant Notice for the delivery period August 1 to August 15, Exhibit A, except as to the fixed price per hundredweight contained therein, and except for the dates of the delivery period during which such price was to be paid. In each delivery period from August 1 to October 15, inclusive, the fixed price per hundredweight contained in the Plant Notice for the period was in excess of the so-called "blended price" computed and announced by the Market Administrator for the Greater Boston, Massachusetts, Marketing Area under the provisions of Order No. 4 as amended, for the same period. And in each such delivery period, the minimum which H. P. Hood & Sons, Inc. agreed to pay, that is, a sum computed on the basis of the Class I and Class II prices fixed in said Order equalized among the producers selling and delivering to the defendant H. P. Hood & Sons, Inc., was in excess of the so-called "blended price" computed and announced by the market administrator as aforesaid for the same period.

The Plant Notice for each such delivery period provides, however, that from the guaranteed minimum price contained in the notice, the defendant H. P. Hood & Sons, Inc. is authorized to deduct each producer's proportionate part of any sums which H. P. Hood & Sons, Inc. is legally required to pay to the Federal market administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order No. 4, as amended, in respect of milk delivered in said period.

In accordance, as it claims, with the terms of its agreement contained in said Plant Notices, the defendant H. P. Hood & Sons, Inc. has not paid to your petitioner for the respective delivery periods from August 1 to October 15 inclusive the guaranteed minimum price set out in the Plant Notices but has deducted from said guaranteed price a sum which it claims is the proportionate part of the sum demanded from it by the market administrator under the terms and provisions of said Order No. 4, as amended. Your petitioner is informed and believes, and therefore avers that the defendant H. P. Hood & Sons, Inc. has made similar deductions for each such delivery period in respect to all other producers who have sold and delivered to it during each such period.

Your petitioner contends that under the terms of the aforesaid Plant Notices, he is legally entitled to the price therein guaranteed and that the defendant H. P. Hood & Sons, Inc. cannot legally be required to pay any sums so deducted by it to the market administrator because the so-called "blended price" was not computed in accordance with the terms and provisions of Order No. 4, as amended, because Order No. 4, as amended, is wholly null and youd and does not have the force of law and because the Act of Congress of May 12, 1933 (48 Stat. 31, U.S.C. Title 7, Section 608 (c)) as amended August 24, 1935 (49 Stat. 672) and as reenacted and amended in the Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public No. 137, 75th Congress), under and by virtue of which the plaintiff, the Secretary of Agriculture of the United States, assumed to issue said Order No. 4, as amended, is wholly null and void and beyond the powers conferred on Congress by the Constitution of the United States. The defendant H. P. Hood & Sons, Inc. has not yet paid to the market administrator the sums so deducted from the price guaranteed in the aforesaid plant notices. In the above-entitled suit, the plaintiffs seek an order compelling the defendant H. P. Hood & Sons, Inc. to pay all amounts allegedly due from it under the terms and provisions of Order No. 4, as amended. If the defendant H. P. Hood & Sons, Inc. makes such payment or is ordered to do so, your petitioner will have no method of recovering from the market adr inistrator, the plaintiffs or the defendant H. P. Hood & Sons, Inc. the sums so deducted from the guaranteed price which are due and owing to your petitioner. The intervention of your petitioner in this cause is necessary to the protection of his interest under his contracts of sale with the defendant H. P. Hood & Sons, Inc.

4. In addition to his interest in protecting his right under the plant notices to the total difference between the guaranteed minimum price contained in said notices and the so-called "blended price", your petitioner has an additional interest in the litigation in the above-entitled suit arising out of the following facts:

Section 1 of Article IX of Order No. 4, as amended, provides that, except in the case of milk purchased from producers who are members of a cooperative association as defined in Section 2 of said Article IX,

each handler shall deduct an amount not exceeding two cents per hundredweight from payments made direct to producers for all milk handled during each delivery period and shall pay the amount so deducted to the market administrator. Your petitioner is not a member of a cooperative association defined as aforesaid. The defendant, H. P. Hood & Sons, Inc., in making payments to your petitioner for milk purchased in each delivery period from August 1 to October 15 inclusive, has deducted from the amounts payable to your petitioner the sum of two cents per hundredweight on all milk so purchased from your petitioner. Your petitioner is informed and believes and, therefore, avers that so long as Order No. 4, as amended, remains in force, and your petitioner is not a member of such a cooperative association, the defendant H. P. Hood & Sons, Inc. will continue to deduct such sum from all amounts due your petitioner for milk hereafter purchased by H. P. Hood & Sons, Inc. from your petitioner. Your petitioner contends that such deductions are and will continue to be unlawful for the reasons set out in paragraph 3 hereof. If the defendant, H. P. Hood & Sons, Inc., is ordered to pay over to the market administrator such sums already deducted and to comply with the terms of Order No. 4, as amended, in the future, your petitioner will be deprived of the sum of two cents per hundredweight on all milk sold by your petitioner to the defendant H. P. Hood & Sons, Inc. during each delivery period from August 1 to October 15, inclusive, and on all milk that your petitioner may sell to the defendant H. P. Hood & Sons, Inc. hereafter, to which sums he is lawfully entitled. He will be unable to recover such sums from the market administrator, the plaintiffs in the above-entitled suit, or from the defendant H. P. Hood & Sons, Inc. The intervention of your petitioner in the aboveentitled suit is necessary to protect his interests in receiving the full payment for all milk sold by him to the defendant H. P. Hood & Sons, Inc. without the unlawful deduction of two cents per hundredweight.

5. Your petitioner has a further interest in the litigation in the

above-entitled suit arising out of the following facts:

Your petitioner has sold and delivered milk to the defendant H. P. Hood & Sons, Inc. for a period of many years prior to August 1,

1937; since that date he has been and is now continuing to sell and deliver milk to said defendant; and he has every reasonable expectation of continuing his present business relations with said defendant and of selling and delivering milk to said defendant in the future. The effect of Order No. 4, as amended, has been and now is to reduce and lower the price which your petitioner can obtain for milk sold by him to said defendant, and if said Order is enforced against said defendant in the future, the price which your petitioner will be able to obtain for milk sold to said defendant will continue to be so reduced and lowered. Your petitioner is informed and believes and, therefore, avers that for many years the proportion of Class I milk. purchased by the defendant, H. P. Hood & Sons, Inc. to the total milk purchased by it has been greatly in excess of the proportion of Class I milk purchased by all handlers in the Greater Boston, Massachusetts, Marketing Area to the total milk purchased by all such handlers and that the defendant, H. P. Hood & Sons, Inc., has similarly purchased a higher percentage of Class I milk during each delivery period from August 1, 1937, to October 15, 1937. The "blended price", computed and announced by the market administrator under the terms of Order No. 4, as amended, is based on the prices for Class I and Class II sales equalized among all producers selling to all handlers in said marketing area. If your petitioner were paid on the basis of Class I and Class II prices equalized among all producers selling to the defendant, H. P. Hood & Sons, Inc., he would receive a higher price for his milk than if he is paid on the basis of. such prices equalized among all producers selling to all handlers in said marketing area. Except for intervals when the defendant, H. P. Hood & Sons, Inc., was required to purchase milk on the basis of prices determined by market-wide equalization, either under Federal licenses or orders, or due to the insistence of cooperative associations controlling practically all its supply of milk, it has in the past consistently paid prices to your petitioner substantially in excess of the prices determined by market-wide equalization. Your petitioner is informed and believes and therefore avers that the defendant, H. P. Hood & Sons, Inc., would continue its consistent policy of paying said higher prices but for the provisions of Order No. 4, as amended,

requiring the defendant to make payments to the market administrator. As set out in paragraph 3 hereof, your petitioner contends that the provisions of Order No. 4, as amended, are without authority of law and are null and void. Your petitioner has an interest in contesting the enforcement of said Order as against the defendant H. P. Hood & Sons, Inc. in that it has and will continue to reduce and lower the price which your petitioner receives for milk sold to said defendant and will impair the advantageous business relations obtaining between your petitioner and said defendant. The intervention of your petitioner in the above-entitled suit is the only method whereby your petitioner can protect that interest.

Wherefore, your petitioner prays that an order may be entered permitting him to intervene in the above-entitled cause as a defendant with leave to file his proposed answer, a copy of which is attached hereto, marked "Exhibit B", and for such further and other relief in

the premises as to this court may seem just and fit.

E FRANK BRANON.

MERRILL AND MERRILL,

Solicitors for the Petitioner.

UNITED STATES OF AMERICA.

DISTRICT OF FRANKLIN, VERMONT,

COUNTY OF FRANKLIN, SS.

Then personally appeared E. Frank Branon, the petitioner in the foregoing petition, and made oath that he has read the foregoing petition and knows the contents thereof and that the same are true as of his own knowledge except the matters stated to be on information and belief and that, as to those matters, he believes them to be true.

Subscribed and sworn to before me.

WILMA S. WILLIAMS,

Notary Public.

Allowed 12-30-37. GEO. C. SWEENEY.

EXHIBIT A.

PLANT NOTICE

To Hood Producers Delivering to This Station:

The Secretary of Agriculture has issued an order which purports to govern prices to be paid to producers eligible to ship milk to the Boston Market. The order is effective August 1. Following our custom of some months past, we are quoting a price for August milk subject to such adjustments as the order may require.

H. P. Hood & Sons, Inc. will pay for the figst half of August, 1937 for all milk delivered by individual producers to its plants, not less than \$2.40 per cwt. net for 3.7% milk in the 200 mile zone with a butterfat differential based on the value of fat in cream less 8 cents per pound, but in no event less than the prices fixed in the Order equalized among producers of H. P. Hood & Sons, Inc. From said guaranteed minimum price of \$2.40 per cwt. net, H. P. Hood & Sons, Inc. is authorized to deduct each producer's proportionate part of any sums which H. P. Hood & Sons, Inc. is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. Prices in other zones will be adjusted in the usual manner. No producer shall be entitled to recover from H. P. Hood & Sons, Inc. the amount of any such deductions based on payments actually made by H. P. Hood & Sons, Inc. to the Federal Milk Administrator, or pursuant to such a court order, on ground that the exaction of such payments from H. P. Hood & Sons, Inc. was illegal or unconstitutional. If any payments so made, on the basis of which H. P. Hood & Sons, Inc. has made deductions, are unconditionally repaid to H. P. Hood & Sons, Inc., it will distribute such amounts ratable among the producers entitled thereto.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this p' at.

The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. Hood & Sons, Inc. regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

H. P. HOOD & SONS, INC.

August 1, 1937.

EXHIBIT A.

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All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. Hood & Sons, Inc. regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

H. P. HOOD & SONS, INC.

August 1, 1937.

Also at the same term, the following Answers were filed:

ANSWER OF DEFENDANT H. P. HOOD & SONS, INC.
[Filed November 3, 1937.]

Now comes the defendant H. P. Hood & Sons, Inc. and in answer

to the plaintiffs' bill of complaint, says:

1. The defendant admits that the plaintiff Henry A. Wallace is the Secretary of Agriculture of the United States, but is without knowledge as to his motive for joining in this suit and neither admits nor denies these allegations but leaves the plaintiffs to their proof.

2. The defendant admits that it is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, and that it has its principal place of business at 500 Rutherford Avenue,

Boston, in said Commonwealth.

2a. The defendant H. P. Hood & Sons, Inc. does not answer the first sentence in paragraph 2a, that allegation being directed to the

defendant Noble's Milk, Company. The defendant H. P. Hood & Sons, Inc. admits that Noble's Milk Company is a subsidiary of H. P. Hood & Sons, Inc., and that the corporations are operated under

the same general policies.

3. The defendant admits that the bill of complaint is brought pursuant to authority purported of be given by the section of the Act referred to in paragraph 3 of the bill of complaint; but the defendant denies the constitutionality of the Act and the validity of the Order of the Secretary as hereinafter more specifically set forth.

4. The defendant is ignorant as to whether the statements contained in paragraphs 4, 5 and 6 of the bill of complaint are true, and neither admits nor denies the same but leaves the plaintiffs to

their proof thereof.

5. The defendant is ignorant of the purposes of Order No. 4, but states that if its purposes are as set forth in paragraph 7 of the bill of complaint, said Order fails to accomplish such purposes in that it tends to depress the purchasing power of farmers who, by reason of geographical location and otherwise are legitimately entitled to share in the fluid milk market in the Marketing Area. Except for the relatively ineffectual limitation embodied in Paragraph 2 of Section 1 of Article VIII, the Order contemplates no limit upon the quantity of surplus milk that may be included in the market pool. There is no definition of, or limitation upon the production area covered by the Order, and new producers, as well as those who are not economically justified in seeking to ship their milk into the Marketing Area, are given an unfair equality with producers having established outlets.

6. The defendant is ignorant as to whether the allegations contained in paragraph 8 of the bill of complaint are true and is therefore unablé either to admit or deny said allegations but leaves the

plaintiffs to their proofs thereof.

7. The defendant in answer to the allegation of fact contained in paragraph 9 of the bill of complaint says that from February 9, 1936, until August 1, 1936, Order No. 4 was treated by the Secretary of Agriculture as being continuously in effect, but a large number of producers and a large number of handlers considered themselves not bound thereby and did not comply therewith; that as of August 1, 1936, the Secretary of Agriculture suspended said Order No. 4.

8. The defendant admits that on June 25, 1937, the acting Secretary of Agriculture purported to terminate the order of suspension effective July 1, 1937, relative to Article 1, Article 2, Article 3, Article 5, Article 6-Sec. 1, Article 12, Article 13, Article 14, Article 15, Article 16, but denies that the Secretary of Agriculture did so pursuant to the authority vested in him by the provisions of the Act or the applicable general regulations thereunder.

And further answering the allegations of paragraph 10 of said bill

of complaint, the defendant says:

The authority conferred upon the Secretary of Agriculture by Section 8c (16) (A) of the statute to suspend the operation of orders necessarily implies suspension for a limited period of time. During the period of over ten months between the date of suspension and the date of alleged reinstatement, Order No. 4 was in reality abandoned, as clearly appears from the fact that on June 19, 1937, the Secretary promulgated a proposal for an entirely new order without reference to Order No. 4. During said period no attempt was made to enforce Order No. 4, and changes in the marketing conditions in the marketing area, due to the refusal of certain large associations of producers to sell to the defendant and certain other large handlers, rendered said Order inappropriate to effect the purposes of the statute.

Moreover, although the hearings held in the latter part of June and early July purported to be based upon a proposal to amend Order No. 4, the notice to producers of a referendum to be held on July 17, 1937, and the ballots submitted to producers in said referendum (copies of which are annexed hereto as Exhibits A and B respectively) indicated clearly that the provisions of Order No. 4 which the Secretary had purported to reinstate as of August 1, 1937, would not become effective unless the proposed amendments were approved by the producers. Thus the alleged reinstatement was qualified in such a manner that in reality the producers were voting upon a new order rather than upon an amendment to an old order.

The provisions to be "amended" were not in effect when the vote was taken on the "amendments", and were not to be effective unless the "amendments" were approved. This is further evidence that the original Order No. 4 had in fact been abandoned by the Secretary

of Agriculture beyond possibility of reinstatement.

9. The defendant admits that on June 24, 1937, the Secretary of Agriculture gave notice of a public hearing on a proposed amendment to Order No. 4, and that said public hearing was held at St. Johnsbury, Vermont, on June 30, 1937, at Boston, Massachusetts, on July 1, 1937, and at A. susta, Maine, on July 2, 1937, but the defendant is ignorant as to whether all interested parties were given an opportunity to be heard on the proposed amendment at the places or times mentioned, and is unable to admit or to deny the allegations in the bill with reference to the opportunity afforded to all interested parties at the times or places mentioned to be heard on the proposed amendment, but leaves the plaintiffs to their proof thereof. The defendant is ignorant as to whether the public hearing before mentioned was attended by representatives of the producers, handlers and consumers of milk sold in the Boston Area as alleged in paragraph 11 of said bill of complaint, and is unable to admit or to deny this allegation of paragraph 11 and leaves the plaintiffs to their proof thereof.

10. The defendant is ignorant as to whether upon the evidence introduced at the said hearing the Secretary made all the findings required by the applicable provisions of the Act as alleged in paragraph 12 of the bill of complaint and is therefore unable either to admit or deny this allegation, and leaves the plaintiffs to their proof thereof. With respect to the allegation that the Secretary issued an amendment to said Order No. 4, effective August 1, 1937, the defendant admits that the Secretary purported to issue an amendment to said Order No. 4 but denies that said amendment was effective August 1, 1937, or at any other time. The defendant denies that said amendment contains terms or conditions authorized by the applicable provisions of the Act and no others.

11. The defendant denies that said amendment to Order No. 4 was favored and approved by more than 72 percent of the producers who during the representative month of May, 1937, had been engaged in the production of milk for sale in the Boston Area and who voted at a referendum conducted by the Secretary pursuant to Section 8c (19) of the Act. And further answering the allegations of said paragraph 13 of the bill of complaint the defendant says that the referendum conducted by the Secretary for the purpose of determining producer approval of the amendment to Order No. 4 did not meet the requirements of the statute for the following reasons, among others:

(1) The defendant is informed, believes and therefore avers that a substantial number of producers who had not complied with the health regulations applicable to milk sold for consumption as milk in the Marketing Area and who were therefore not producers within the definition contained in the Order (which definition is presumptively a correct interpretation of the statute) were permitted themselves to vote or to have votes cast on their behalf by cooperative associations claiming them as members, and because of this improper inclusion of these persons who were not producers as defined in the Order, the determination of the Acting Secretary of Agriculture on the 27th of July, 1937, to the effect that the issuance of the amendment to the Order was approved or favored by over 70 percent of the producers who during the month of May, 1937, had been engaged in the production of milk for sale in said area and who participated in a referendum conducted by the Secretary on July 17, 1937, was erroneous; and that if the votes of persons who were not producers within the definition of the Order had been excluded from the computation of the vote the proposed amendment would not have been favored by the percentage of favoring votes required by the statute.

(2) The defendant is informed, believes and therefore avers that one or more associations of producers were permitted to vote on behalf of alleged member producers who, during the month of May, 1937, the representative period determined by the Secretary of Agriculture, were not engaged in the production of milk for sale in the Marketing Area.

- (3) The defendant is informed, believes and therefore avers that votes were cast on behalf of a substantial number of producers by associations of which they were allegedly members despite the fact that the association was under contract to deliver to handlers outside the Marketing Area all milk received at certain country plants to which such producers delivered their milk.
 - (4) The defendant is informed, believes and therefore avers that the polling places designated for the referendum were so inconvenient and inaccessible to a substantial number of producers as to virtually deprive such producers of the opportunity to vote and that in some instances the polling places were closed prior to the announced closing time. The defendant protested to the Secretary of Agriculture against the inaccessibility and scarcity of the polling places about to be designated and on July 10, 1937 wrote a letter to the arting market administrator, a copy of which is annexed hereto as Exhibit C, renewing such protest.
 - (5) The referendum purported to be on a proposal to amend an existing order, whereas in reality the provisions to be amended were not in effect at the time of the vote and the producers were expressly denied the alternative of the old order or the amendments by statements in the printed notice of the referendum, a copy of which is annexed hereto as Exhibit A, as well as by statements on the producer ballot, a copy of which is annexed hereto as Exhibit B, which statements were to the effect that the proposed amendments would not be issued by the Secretary of Agriculture and provisions of Order No. 4 relating to prices, pooling and payments to producers would not become effective unless the issuance of the amendments was approved by two-thirds of the producers.
- 12. The defendant denies that the Order as amended has been continuously in effect from the purported effective date thereof to and including the date of the filing of this bill of complaint.

13. The defendant is ignorant of the truth or falsity of the facts alleged in paragraph 15 of the bill of complaint and is therefore

unable to admit or deny the same, but leaves the plaintiffs to their

proof thereof.

14. The defendant admits that it is engaged in the business of receiving, buying, processing, selling and distributing milk but denies that it is a "handler" of milk as defined in Section 8c (1) of the Act and in Paragraph 6 of Section 1 of Article 1 of the Order as amended, or as such is subject to the applicable provisions of the Act and of the Order as amended. The allegations of paragraph 16 of the bill of complaint which are directed to Noble's Milk Company, the defendant H. P. Hood & Sons, Inc. does not answer.

15. The defendant H. P. Hood & Sons, Inc. admits that it purchases milk from producers located in the states of Maine, New Hampshire, Vermont and New York. The defendant admits that a portion of the milk so purchased is transported to the distributing plant of the defendant corporation in Boston in interstate commèrce and that it is there processed and then distributed and sold by the defendant in the Boston Area; but some of the milk purchased is processed at the country stations located elsewhere than in Boston. The defendant admits that it operates receiving stations at Auburn, West Farmington; Unity and Belfast, all in the State of Maine; at Colebrook, West Canaan and Lancaster, all in the State of New-Hampshire; at Barnet, Plainfield, Barton, Hardwick, Orleans, Newport, Fairfield, St. Albans and Sheldon Junction, all in the State of Verment, and at Eagle Bridge and Salem in the State of New York. The defendant admits that it also purchases milk from producers located within the Commonwealth of Massachusetts and processes and distributes and sells the said milk in the Boston Area. The defendant admits that in the delivery period August 1 to August 15, 1937 it purchased milk from a total of 3186 producers. The defendant admits that of this total 902 delivered to plants located in the State of Maine, 473 to plants iocated in the State of New York, 1367 to plants located in the State of Vermont, 371 to plants located in the State of New Hampshire and 73 to the plant in the Commonwealth of Massachusetts. The defendant admits that from time to time it also purchases from other handlers and distributors and sells in the Boston Area milk which has been received by such handlers from producers located outside the Commonwealth of Massachusetts and transported into the Boston Area. The defendant admits that in the delivery period August 1 to August 15, 1937, it handled 10,332,774 pounds of milk in the Boston Area. The allegations of paragraph 17 of the bill of complaint which are directed to Noble's Milk Company, the defendant H. P. Hood & Sons, Inc., does not answer.

16. The defendant admits that it has been since the purported effective date of the Order as amended, and now is, a competitor of all other handlers of milk in the Boston Area, but as to the allegation that all of the milk handled by the defendant in the Boston Area since the effective date of the Order as amended has been handled in competition with milk which is purchased outside the Commonwealth of Massachusetts, transported in interstate commerce to distributing plants within the said Commonwealth and then distributed and sold in the Boston Area, the defendant says that it is ignorant of the truth or falsity of this allegation and therefore neither admits nor denies the same but leaves the plaintiffs to their proof thereof. The defendant denies that all of the handling of milk in the Boston Area by the defendant corporation is in the current of interstate commerce as defined in Section 10 (j) of the Act, or directly burdens, obstructs or affects interstate commerce in milk and its products.

17. The defendant admits that milk is an article of diet which is of great importance to the public health, and it is imperative that a reliable and adequate supply of milk be maintained. The defendant admits that the consumers in the Boston Area are completely dependent upon milk producers outside of Massachusetts for a steady flow of milk. The defendant denies, however, that to assure a continuous reliable supply milk producers shipping into the Boston Area to the number of 18,000 must be paid fair and reasonable prices for their milk, and the defendant further says that such number includes milk producers for whose product there is no economic need in the Boston Marketing Area, and that these producers for whose product there is no economic need in the Boston Marketing Area have been induced to become milk producers shipping into the Boston market by certain cooperative issociations for purposes of increasing the strength and prestige of these cooperative associations, and that the artificial

increase of the number of milk producers shipping to the Boston Area to 18,000 has greatly enhanced the amount of surplus milk in said Area to the extent of 150 percent to 300 percent more than the normal and proper surplus for said Area. And the defendant further says that it maintains only that proportion of surplus milk which is necessary to supply reasonable market demands of the Boston market for fluid milk, and that the effect of Order No. 4, as amended, is to force it as well as its producers to carry the burden of the excessive surplus now in the market causing great damage to the defendant and its producers, as well as the perpetuation of said excessive and artificially stimulated surplus milk in the Boston Marketing Area.

18. The defendant admits that Maine, New Hampshire, Vermont and Massachusetts supply practically all of the milk marketed in the Boston Area. The defendant admits that milk production is a substantial source of farm cash income in Maine, New Hampshire, Vermont and Massachusetts. As to the allegation that in 1935 the farm cash income from milk sold from farms in Maine represented 24 percent of the total farm cash income, in New Hampshire 44 percent, in. Vermont 67 percent, in Massachusetts 38 percent, the defendant says that it is ignorant of the truth or falsity of this allegation and therefore neither admits nor denies the same but leaves the plaintiffs to their proof thereof.

19. The defendant is ignorant of the truth or falsity of the allegations in paragraph 21 of the bill of complaint and therefore neither admits nor denies the same but leaves the plaintiffs to their proof

thereof.

20. The defendant admits that the Order as amended classifies milk according to the use for which the milk is sold; the defendant says that it is ignorant as to the truth or falsity of the allegation that this classification is in accordance with long established practice in the milk industry of the United States, including the Boston Area, and neither admits nor denies the same but leaves the plaintiffs to their proof thereof. The defendant denies that the Order fixes a price for each such use classification, and denies that all milk sold or distributed by handlers as whole milk, chocolate milk or flavored milk is designated as Class I milk and bears a higher price than milk sold, distributed or disposed of for other uses, the latter being designated as Class II milk. The defendant denies that the Order as amended provides for payments to the producers of milk in substantially the manner set forth in paragraph 22 of the bill of complaint. The defendant denies that under the Order the blended price is a minimum price, or that handlers are permitted to pay producers more than the blended price. .

21. The defendant denies the allegations in paragraph 23 of the

bill of complaint.

22. The defendant denies that by the provisions of Paragraph 3 of Section 1 of Article VIII of the Order as amended, the defendant is now required or obligated to pay to the market administrator for the delivery period August 1 to August 15, 1937, the amount of \$30,-703.03, and the defendant denies that said amount is now due or owing, and the defendant denies that it is now required or obligated to pay to the market administrator for the delivery period August 16 to August 31, 1937, the amount of \$32,487.42, and the defendant denies that said amount is now due or owing. The defendant admits that it has failed and refused to pay to the market administrator the sum of \$30,703.03 and the sum of \$32,487.42, but denies that in so refusing to pay these sums it has violated or is now violating Paragraph 3 of Section 1 of Article VIII of the Order as amended. And further answering said allegations, the defendant says that it is informed and believes and, therefore, avers that certain handlers have reported to the market administrator for the periods of August 1 to August 15 and August 16 to August 31 under Article V of the Order, milk produced by certain producers who did not comply with the health regulations applicable to milk sold for consumption as milk in the marketing area, and that such milk was included by the market administrator in computing the value of milk sold or used by such handlers, and the uniform or blended prices under Sections 1 and 2 of Article VII of the Order, that such persons so reported to the market administrator and so included by him in the aforesaid computation are not producers within the definition contained in the Order, and that the inclusion of the unqualified milk in determining the blended price for the periods in August previously referred to resulted in an

illegal depression of the blended price and resulted or an erroneous increase in the amount of said \$30,703.03 alleged to be due for the delivery period August 1 to August 15, 1937, and an erroneous increase in the amount of \$32,487.42 alleged to be due for the delivery period August 16 to August 31, 1937, under Paragraph 3 of Section

1 of Article VIII of the Order. And the defendant further says that the market administrator in charge of said computations, as well as his assistants, have publicly and under oath admitted that if they had computed the sums alleged to be due the market administrator from the defendant under the strict provisions of the Order, such sums would not have been determined to be \$30,703.03 and \$32,487.42, but would have been lower than these amounts, and the defendant further says that it is ignorant as to the precise extent of the error in-

volved in the computation of the aforesaid sums. 23. The defendant does not answer the allegations in paragraph 25 of the bill of complaint since they are directed to Noble's Milk

Company.

24. The defendant admits that Section 1 of Article X of the Order, as amended, purports to require each handler to pay to the market administrator on or before the twenty-fifth day after the end of each delivery period as his pro rata share of the expenses incurred in the administration of the Order, as amended, not more than two cents per hundredweight on all milk which is delivered to him by producers or produced by him. But the defendant denies that said requirement of the Order is of any legal validity.

25. The defendant admits that the market administrator has demanded of it the amount of \$1,927.50 for the delivery period of August 1 to August 15, 1937, and the amount of \$2,008.96 for the delivery period August 16 to August 31, 1937, under the provisions of Section 1 of Article X of the Order, and admits that it has failed and refused to pay the said amounts, but denies that said amounts. are now due and owing by it or that it is required and obligated to pay the same.

26. The defendant does not answer the allegations in paragraph 28 of the bill of complaint since they are directed to the Noble's Milk Company.

27. The defendant admits that Section 1 of Article IX of the Order

has the provision set forth in paragraph 29 of the plaintiff's bill of complaint, but denies that said provision is of any legal validity.

28. The defendant admits that in the delivery periods August 1 to August 15, 1937, and August 16 to August 31, 1937, it purchased milk from producers who are not members of a cooperative association, and that the market administrator on account of such purchases demanded of it under the provisions of Section 1 of Article IX of the Order for the delivery period August 1 to August 15, 1937, the amount of \$1,900.13, and for the delivery period August 16 to August 31, 1937; the amount of \$1,980.67. The defendant further admits that it has failed and refused to pay the said amounts, but the defendant denies that it is required or obligated to pay the market administrator the amounts so demanded or that said amounts are now due and owing by it.

29. The defendant does not answer the allegations in paragraph 31 of the bill of complaint since they are directed to the Noble's Milk Company.

30. The defendant denies each and every allegation in paragraph

32 of the bill of complaint.

And further answering this defendant says that said Order No. 4 as amended is without force of law and wholly invalid for the following reasons:

A. That Order No. 4 effective February 9, 1936, was terminated as hereinbefore set forth, by the order of the Secretary of Agriculture suspending said Order on August 1, 1936, and that said Order could not be revived or amended.

B. That, said Order No. 4, as amended, was not approved or favored by at least two-thirds of the producers of milk, who, during the representative month of May, 1937, had been engaged in the production of milk for sale in the Boston Area or by producers who, during such representative period, had produced for market at least two-thirds of the volume of milk sold within the Boston Area.

C. That in computing and determining the percentage of producers approving or favoring said Order, as amended, the market administrator included as producers persons who were not producers as defined in Article I of said Order, as hereinbefore set out.

D. That said Order No. 4, as amended, contains terms and provisions not in accordance with the Agricultural Adjustment Act, as amended and re-enacted, under and pursuant to which the Secretary of Agriculture purported to issue said Order.

And further answering, this defendant says that the provisions of the Agricultural Adjustment Act, as amended and re-enacted, purporting to regulate the marketing of milk, are unconstitutional and void in the following as well as in other respects:

A. The regulation of prices to be paid for milk to producers in the several states and the equalization of said prices among producers is not within the power of Congless to regulate commerce among the several states, as defined by Article I, Section 8 of the Constitution of the United States, and is not within any of the other powers granted to Congress by the Constitution.

B. Said Act represents an attempt on the part of Congress to exercise powers which are reserved to the States by the Tenth Amendment to the Constitution of the United States.

C. The provisions of said Act authorizing the Secretary to issue orders fixing the minimum price to be paid for milk, requiring the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the use made of such milk by individual handlers to whom it is delivered, and providing for adjustments in payments among handlers, constitute—a deprivation of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

D. Said Act delegates to an administrative officer legislative powers conferred exclusively on Congress under Article I, Section 1, and Article I, Section 8 of the Constitution of the United States.

E. Said Act, by providing that orders shall not be effective unless favored or approved by two-thirds of the producers within the Marketing Area, delegates to private citizens legislative powers that must be exercised exclusively by Congress.

CHARLES B. RUGG,

ROPES, GRAY, BOYDEN & PERKINS,

Solicitors for H. P. HOOD & SONS, INC.

EXHI A.

United States Department of Agriculture Room 407, Post Office Bldg., Boston, Mass.

July 12, 1937

Dear Sir: There is enclosed a copy of a compilation of Order No. 4 regulating the handling of milk in the Greater Boston marketing area, which incorporates certain proposed amendments to that order.

The proposed amendments will not be issued by the Secretary of Agriculture, and the provisions of Order No. 4 relating to prices, pooling, and payments to producers will not become effective, unless the issuance of these amendments is approved by at least two-thirds of the producers producing milk for sale in the Greater Boston marketing area during the month of May 1937, as evidenced by the votes of the producers who participate in the referendum.

Enclosed is a list of the times and places at which you may cast a ballot to show your approval or disapproval of these amendments. You may visit whichever polling place is most convenient to you. When you go there to vote, it will be necessary for you to sign a register book with your name and initials identically the same as they appear on the envelope in which this letter came to you.

The questions which will appear on the ballot will be as follows:

1. How much milk did you deliver during the month of May 1937 to a handler (Boston dealer)?

2. What is the name of the handler to whom your milk was delivered?

3. What is the location of the handler's plant to-which your milk was delivered in May 1937?

4. What is the name of the county and State in which is located the farm where the above milk was produced?

5. Do you approve the issuance of the amendments to Order No. 4 which would make that order read as shown in the attached compilation thereof, released by the United States Department of Agriculture under date of July 9, 1937?

Your vote on question No. 5 will indicate your approval or dis-

approval of the amendments to Order No. 4 which are contained in the enclosed compilation, referred to on the ballot.

At the polling place you will mark your ballot in secret, fold and place it in a sealed can which will not be opened until the ballots are counted at Boston. The vote of each producer will be kept strictly confidential, under rigid government regulations.

Very truly yours,

RICHARD D. APLIN.

Senior Marketing Specialist.

Enclosure.

MILK	PROD	UCER'S	BAI	LOT
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	MILK PRODUCER'S BALLOT
1.	How much milk did you deliver during the month of May 1937 to a handler (Boston dealer)? pounds.
	What is the name of the handler to whom your milk was de- livered?

3.	What is the location of the handler's plant to which your milk was delivered in May 1937?
4.	What is the name of the county and State in which is located
*	the farm where the above milk was produced?
	· · · · · · · · · · · · · · · · · · ·
5.	Do you approve the issuance of the amendments to Order No. 4
	which would make that order read as shown in the attached com-
	pilation thereof, released by the United States Department of
	Agriculture under date of July 9, 1937?
	Yes No
	Provisions of Order No. 4 relating to prices, pooling, and pay-
	ments to producers, will not become effective unless the amend-
	ments are approved by two-thirds of the producers.
as	our name must be signed exactly you signed the register, else this lot cannot be counted.) Name Address
	Please Answer Every Question

EXHIBIT C.

July 1, 1937.

Mr. Richard D. Aplin Acting Marketing Administrator Greater Boston Marketing Area Room 407, Post Office Building Boston, Mass.

Dear Sir: We enclose herewith the lists of producers from whom we purchased milk for the Boston market during the month of May, 1937. You state in your request for this information that it is for the purpose of conducting a poll among the producers on a proposed amendment to Order Number 4.

We accede to your request in order that these producers may not be prejudiced in their right to vote. We do not recognize the socalled partial reinstatement of Order Number 4 as being of any legal

effect and reserve all rights to challenge its validity.

We have been advised today that you propose to conduct the poll by the designation of a few polling places in the Northern New England Area, to which the producers must personally go to exercise their franchise. We have already protested to the Secretary of Agriculture in behalf of some 3,000 producers that this is an unfair and unjust method of taking the vote. During this period the producers are so busy with the summer farm work that they cannot afford the time to travel, in many instances fifty miles or more, to get to a voting place.

We are reluctant to believe that you will adhere to a designation of polling places which will have the practical result of depriving 3,000 producers who have been selling their milk to H. P. Hood & Sons for a long time of any opportunity to express their convictions as provided in the law. We believe that any genuine effort to have the producers exercise their franchise would require the designation of a polling place in each community where there is a milk receiving plant.

Very truly yours,

D. N. GEYER

ANSWER OF DEFENDANT NOBLE'S MILK COMPANY. [Filed November 10, 1937.]

Now comes the defendant Noble's Milk Company and in answer to the plaintiffs' bill of complaint, says:

- 1. The defendant admits that the plaintiff, Henry A. Wallace, is the Secretary of Agriculture of the United States, but is without knowledge as to his motive in joining in this suit and neither admits nor denies these allegations but leaves the plaintiffs to their proof thereof.
- 2. The defendant Noble's Milk Company does not answer the allegations of paragraph 2 of the bill of complaint since they are addressed to the defendant H. P. Hood & Sons, Inc.
- 2a. The defendant admits that it is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 500 Rutherford Avenue, in the City of Boston in said Commonwealth. The defendant admits that Noble's Milk Company is a subsidiary of H. P. Hood & Sons, Inc. and that the corporations are operated under the same general policies, but the defendant denies that it is controlled or dominated by the defendant H. P. Hood & Sons, Inc.

3. The defendant admits the allegations of paragraph 3 of the bill of complaint.

4. The defendant is ignorant as to whether the allegations contained in paragraphs 4, 5 and 6 of the bill of complaint are true and neither admits nor denies the same but leaves the plaintiffs to their proof thereof.

5. The defendant is ignorant of the purposes of Order No. 4 but leaves the plaintiffs to their proof thereof, if material.

6. The defendant is ignorant as to whether the allegations contained in paragraph 8 of the bill of complaint are true and is therefore unable either to admit or deny said allegations but leaves the plaintiffs to their proofs thereof.

7. The defendant in answer to the allegations of fact contained in paragraph 9 of the bill of complaint says that from February 9, 1936 to August 1, 1936, Order No. 4 was treated by the Secretary of Agriculture as being continuously in effect.

- 8. The defendant admits that on June 25, 1937, the acting Secretary of Agriculture purported to terminate the order of suspension effective July 1, 1937, relative to Article 1, Article 2, Article 3, Article 5, Article 6—Section 1, Article 12, Article 13, Article 14, Article 15, Article 16, but defendant is ignorant whether he did so pursuant to the authority vested in him by the provisions of the Act or the applicable general regulations thereunder and leaves the plaintiffs to their proof thereof, if material.
- 9. In answer to the allegations of paragraph 11 of the bill of complaint, the defendant admits that on June 24, 1937, the Secretary of Agriculture gave notice of a public hearing on a proposed amendment to Order No. 4, and that said public hearing was held at St. Johnsbury, Vermont, on June 30, 1937, at Boston, Massachusetts, on July 1, 1937, and at Augusta, Maine, on July 2, 1937, but the defendant is ignorant as to whether all interested parties were given an opportunity to be heard on the proposed amendment at the places or times mentioned, and is unable to admit or to deny the allegations in the bill with reference to the opportunity afforded to all interested parties at the times or places mentioned to be heard on the proposed amendment, but leaves the plaintiffs to their proof thereof. The defendant is ignorant as to whether the public hearing before mentioned was attended by representatives of the producers, handlers and consumers of milk sold in the Boston Area as alleged in paragraph 11 of said bill of complaint, and is unable to admit or to deny this allegation of paragraph 11 and leaves the plaintiffs to their proof thereof.
- 10. In answer to the allegations in paragraph 12 of the bill of complaint, the defendant says it is ignorant as to whether upon the evidence introduced at the said hearing the Secretary made all the findings required by the applicable provisions of the Act as alleged in said paragraph 12 (of the bill of compaint) and is therefore unable either to admit or deny this allegation, and leaves the plaintiffs to their proof thereof: With respect to the allegation that the Secretary issued an amendment to said Order No. 4, effective August 1, 1937, the defendant admits that the Secretary purported to issue an amendment to said Order No. 4 but is ignorant as to whether said amend-

ment was effective August 1, 1937 or at any other time, and whether said amendment contains terms or conditions authorized by the applicable provisions of the Act and no others, and leaves the plaintiffs to their proof thereof, if material.

11. Answering the allegations in paragraph 13 of the bill of complaint, the defendant says that it is ignorant as to whether said amendment to Order No. 4 was favored and approved by more than 72 percent of the producers who during the representative month of May, 1937, had been engaged in the production of milk for sale in the Boston Area and who voted at a referendum conducted by the Secretary pursuant to Section 8c (19) of the Act, and leaves the plaintiffs to their proof thereof.

12. Answering the allegations in paragraph 14 of the bill of complaint the defendant says that it is ignorant as to whether the Order as amended has been continuously in effect from the purported effective date thereof to and including the date of the filing of this bill of complaint, and leaves the plaintiffs to their proof thereof.

13. The defendant is ignorant of the truth or falsity of the facts alleged in paragraph 15 of the bill of complaint and is therefore unable to admit or deny the same, but leaves the plaintiffs to their proof thereof.

14. The defendant does not answer the allegations in the first sentence of paragraph 16 of the bill of complaint which are directed to the defendant H. P. Hood & Sons, Inc. The defendant admits that it is engaged in the business of receiving, buying, processing, selling and distributing milk, but it does not answer the allegation that it is a "handler" of milk as defined in Section 8c (1) of the Act and in Paragraph 6 of Section 1 of Article 1 of the Order as amended, and as such is subject to the applicable provisions of the Act and of the Order as amended, since that is a conclusion of law.

15. The defendant Noble's Milk Company does not answer the allegations in paragraph 17 of the bill of complaint which are addressed to the defendant H. P. Hood & Sons, Inc. The defendant Noble's Milk Company admits that it purchases milk from producers located in the State of Vermont, but says that these producers in the State of Vermont furnish a very small proportion of its milk

supply. It admits that the milk from producers in the State of Vermont is transported in interstate commerce into the Commonwealth of Massachusetts, but says that such milk is transported by agents of the said Vermont producers and that the sale of said milk to the defendant Noble's Milk Company is consummated in the Commonwealth of Massachusetts. The defendant admits that this milk is then sold to the defendant H. P. Hood & Sons, Inc. The defendant admits that some of the processing of this milk is done by the defendant H. P. Hood & Sons, Inc., and that H. P. Hood & Sons, Inc. distributes and sells this milk in the Boston Area. The defendant further admits that it purchases milk from producers located in the Commonwealth of Massachusetts and says that these purchases constitute by far the greater proportion of its milk supply, and further admits that it sells the said milk to the defendant H. P. Hood & Sons, Inc. which contributes to the processing of the said milk and distributes and sells it in the Boston Area. The defendant admits that during the period August 1 to August 15, 1937, the defendant Noble's Milk Company handled 585,724 pounds of milk in the Boston Area.

16. In answer to the allegations in paragraph 18 of the bill of complaint, the defendant admits that it has been since the purported effective date of the Order as amended, and now is, a competitor of all other handlers of milk in the Boston Area, but as to the allegation that all of the milk handled by the defendant Noble's Milk Company in the Boston Area since the purported effective date of the Order as amended has been handled in competition with milk which is purchased outside of the Commonwealth of Massachusetts, transported in interstate commerce to distributing plants within the said Commonwealth and then distributed and sold in the Boston Area, the defendant says that it is ignorant of the truth or falsity of this allegation and therefore neither admits nor denies the same but leaves the plaintiffs to their proof thereof. The defendant denies that all of the handling of milk in the Boston Area by the defendant corporation is in the current of interstate commerce as defined in Section 10 (j) of the Act, or directly burdens, obstructs or affects interstate commerce in milk and its products. The defendant Noble's

Milk Company does not answer the allegation in paragraph 18 of the bill of complaint which is addressed to the defendant H. P. Hood & Sons, Inc.

17. In answer to paragraph 19 of the bill of complaint, the defendant admits the allegations in the first two sentences of said paragraph; but the defendant is ignorant as to the truth or falsity of the allegations in the last sentence thereof and leaves the plain.

tiffs to their proof thereof.

18. In answer to the allegations in paragraph 20 of the bill of complaint, the defendant admits that Maine, New Hampshire, Vermont and Massachusetts supply practically all of the milk marketed in the Boston Area. The defendant admits that milk production is a substantial source of farm cash income in Maine, New Hampshire, Vermont and Massachusetts. As to the allegation that in 1935 the farm cash income from milk sold from farms in Maine represented 24 percent of the total farm cash income, in New Hampshire 44 percent, in Vermont 67 percent, in Massachusetts 38 percent, the defendant says that it is ignorant of the truth or falsity of this allegation and therefore neither admits nor denies the same but leaves the plaintiffs to their proof thereof.

19. The defendant is ignorant of the truth or falsity of the allegations in paragraph 21 of the bill of complaint and therefore neither admits nor denies the same but leaves the plaintiffs to their proof

thereof.

20. In answer to the allegations in paragraph 22 of the bill of complaint, the defendant admits that the Order as amended classifies milk according to the use for which the milk is sold; the defendant further says that it is ignorant as to the truth or falsity of the allegation that this classification is in accordance with long established practice in the milk industry of the United States, including the Boston Area, and neither admits nor denies the same but leaves the plaintiffs to their proof thereof. The defendant does not answer the remaining allegations in said paragraph since they purport to be merely descriptive of Order No. 4, as amended, a copy of which is attached to the bill of complaint, marked "Exhibit E".

21. The defendant admits the allegations in the first two sentences

in paragraph 23, but denies the allegations contained in the last sentence of said paragraph.

- 22. The defendant Noble's Milk Company does not answer the allegations in paragraph 24 of the bill of complaint since they are addressed to the defendant H. P. Hood and Sons, Inc.
- 23. In answer to the allegations in paragraph 25 of the bill of complaint the defendant admits that the market administrator fpurporting to act under the provisions of Paragraph 3 of Section 1 of Article VIII of the Order) has demanded of it the amount of \$1,-823.81 for the delivery period August 1 to August 15, 1937, and the amount of \$1,957.34 for the delivery period August 16 to August 31, 1937, and that it has not paid these sums directly to the market administrator; but the defendant denies that it has violated or is now violating Paragraph 3 of Section 1 of Article VIII of the Order inasmuch as it has paid said amounts of \$1,823.81 and \$1,957.34 demanded of it by the market administrator into the registry of this court to abide by the judgment of this court upon acertain bill of interpleader filed by Noble's Milk Company, against Samuel W. Tator, Market Administrator for the Greater Boston, Massachusetts, Marketing Area, and Clifton A. Burnett et al, on October 29, 1937, In Equity No. 4556, all as set forth in paragraph 31 hereof.
- 24. The defendant admits that Section 1 of Article X of the Order, as amended, requires each handler to pay to the market administrator on or before the twenty-fifth day after the end of each delivery period as his pro rata share of the expenses incurred in the administration of the Order, as amended, not more than two cents per hundred-weight on all milk which is delivered to him by producers or produced by him.
- 25. The defendant does not answer the allegations in paragraph 27 of the bill of complaint since they are directed to the defendant H. P. Hood & Sons, Inc.
- 26. In answer to the allegations in paragraph 28 of the bill of complaint, the defendant admits that the market administrator has demanded of it the amount of \$117.14 for the delivery period August 1 to August 15, 1937 and the amount of \$120.93 for the delivery

period August 16 to August 31, 1937, under the provisions of Section 1 of Article X of the Order, and the defendant admits that it has not paid these sums directly to the market administrator, but the defendant denies that it has violated or is now violating the provisions of said Section 1 of Article X inasmuch as it has paid said amounts into the registry of this court to abide by the judgment of this court, upon a certain bill of interpleader filed by Noble's Milk Company against Samuel W. Tator, Market Administrator for the Greater Boston, Massachusetts, Marketing Area and Clifton A. Burnett et al, on October 29, 1937, In Equity No. 4556, all as set forth in paragraph 31 hereof.

27. In answer to the allegations in paragraph 29 of the bill of complaint, the defendant admits that Section 1 of Article IX of the Order requires that except in the case of milk purchased from producers who are members of a cooperative association, each handler shall deduct not more than two cents per hundredweight from payments made direct to producers for all milk handled during each delivery period and shall pay the amount so deducted to the market administrator on or before the twenty-fifth day after the end of such marketing period, to be expended by the market administrator for market information to, and verification of weights, sampling and testing of milk purchased from, said purchasers.

28. The defendant does not answer the allegations in paragraph 30 of the bill of complaint since they are directed to the defendant

H. P. Hood & Sons, Inc.

29. In answer to the allegations in paragraph 31 of the bill of complaint, the defendant admits that in the delivery periods August 1 to August 15, 1937, and August 16 to August 31, 1937, it purchased milk from producers who were not members of a cooperative association determined by the Secretary of Agriculture to be qualified in accordance with Section 2 of Article IX of said Order and that the market administrator on account of such purchases demanded of it under the provisions of Section 1 of Article IX of the Order for the delivery period August 1 to August 15, 1937, the amount of \$117.14 and for the delivery period August 16 to August 31, 1937, the amount of \$120.93, and the defendant admits that it has not paid these sums directly to the market administrator, but the defendant

denies that it has violated or is now violating the provisions of Section 1 of Article IX of said Order inasmuch as it has paid said amounts into the registry of this court to abide the judgment of this court, upon a certain bill of interpleader filed by Noble's Milk Company against Samuel W. Tator, Market Administrator for the Greater Boston, Massachusetts, Marketing Area, and Clifton A. Burnett et al, on October 29, 1937, In Equity No. 4556, all as set forth in paragraph 31 hereof.

30. Answering the allegations of paragraph 32 of the bill of complant, the defendant says that it is ignorant of the matters therein

alleged and leaves the plaintiffs to their proof thereof.

31. And further answering the defendant says that: On October 29, 1937, it filed in this court a bill of interpleader joining as defendants therein Samuel W. Tator, Market Administrator for the Groter Boston, Massachusetts, Marketing Area, and certain producers of milk selling to Noble's Milk Company. A copy of said bill is attached hereto, marked "Exhibit A", and made a part of this answer as fully as if the same were separately set forth herein. Said bill set forth the demand of Samuel W. Tator as Market Administrator of the Greater Boston, Massachusetts, Marketing Area; of the sums referred to in paragraphs 25, 28, 31, of the plaintiffs' bill of complaint in the present cause. Said bill further set forth that the producers selling to Noble's Milk Company were paid under and by virtue of a contract with Noble's Milk Company for the periods August 1 to August 15, 1937, and August 16 to August 31, 1937, a guaranteed minimum price less their proportionate part of the aforesaid total amounts demanded for these periods by Samuel W. Tator as market administrator; that a claim had been made on behalf of all the producers named in said bill to the effect that they were entitled to the full price guaranteed in the aforesaid contract for the August delivery periods and to the effect that the defendant Noble's Milk Company was without authority to make any deductions from said price under the terms of its contract with such producers; inasmuch as the defendant Noble's Milk Company was not legally required to pay any sums to Samuel W. Tator, as market administrator, in respect to milk sold .o the Noble's Milk Company by such producers. Noble's Milk Company paid into the registry of this court

the sum of \$10,202.72, being the total amount of the sums demanded by the market administrator for the delivery periods from August 1 to September 30, 1937, and including the amounts referred to in paragraphs 25, 28, 31 of the bill of complaint in the present case, as being due and owing to the said market administrator, said sum of \$10,202.72 to abide the judgment of this court upon the conflicting claims thereto of said market administrator and said producers selling milk to Noble's Milk Company. The defendant further says that in said bill of interpleader in paragraph 16 thereof, Noble's Milk Company committed itself to pay into the registry of this court all sums hereafter demanded by the market administrator under the terms and provisions of said Order No. 4 as amended to abide the judgment of this court, and, in accordance with the commitment in paragraph 16 of said bill, Noble's Milk Company on November 8, 1937 paid into the registry of this court the sum of \$4,796.17, being the total of the demands of the market administrator under Order No. 4 as amended, for the delivery period October 1 to October 15, 1937, said further sum to abide the judgment of this court upon the conflicting claims thereto of said market administrator and said producers selling milk to Noble's Milk Company. The defendant Noble's Milk Company has complied with all the provisions of said Order, as amended, except to make payments directly to the market administrator as required by the provisions of said Order, as amended, and, in the present case, the plaintiffs make no claim that the defendant has violated or threatens to violate said Order, as amended, in any other particular. The plaintiffs are seeking in the present case to require the defendant Noble's Milk Company to pay over the amounts allegedly due and owing under said Order No. 4, as amended, to the market administrator, Samuel W. Tator, they assert no right or claim on their own behalf to said sums, and under the provisions of said Order, as amended, they have no claim or right on their own behalf to said sums. The issue in the present case, whether the defendant Noble's Milk Company is legally obligated to pay said sums to the market administrator, is the same issue involved in said bill of interpleader which is now pending in this court and still undetermined. The defendant Noble's Milk Company asserts no, claim to the funds deposited in the registry of this court and has made the

said funds available to the market administrator if he is legally entitled thereto.

Wherefore, this defendant prays:

1. That the present proceeding against, it be abated until the determination and disposition of the said bill of interpleader set

out in paragraph 31 hereof;

2. That, in the event the present proceeding be not abated, the parties defendant to said bill of interpleader, namely, the market administrator, Samuel W. Tator, and the defendants named in paragraph 3 of said bill of interpleader, be made parties to this proceeding and be decreed to interplead herein so that it may be determined in such manner as this court shall direct to which of them the sums already deposited in the registry of this court and such sums as may hereafter be deposited ought to be paid; and

3. That this defendant be discharged from all liability to the plaintiffs herein or to the defendants in said bill of interpleader in connection with all demands made in the bill of complaint in this

cause.

ROPES, GRAY, BOYDEN, & PERKINS, CHARLES B. RUGG,

Solicitors for Noble's MILK COMPANY.

EXHIBIT A.

District Court of the United States
For the District of Massachusetts

In Equity No.

Noble's Milk Company, a Massachusetts Corporation, Plaintiff,

Samuel W. Tator, Marketing Administrator for the Greater Boston, Massachusetts, Marketing Area, and Clifton A. Burnett, et al, Defendants

BILL OF INTERPLEADER

Plaintiff herein, Noble's Milk Company, brings this its bill of interpleader under the provisions of the Act of Congress of January 20, 1936, c. 3, § 1; 49 Stat. 1096; U. S. C. Title 28, § 41 (26), and alleges:

1. Plaintiff herein, Noble's Milk Company, is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 500 Rutherford Avenue in the City of Boston in said Commonwealth. It is now and has been for some time engaged in the business of receiving, buying, processing, selling and distributing milk.

- 2. The defendant, Samuel W. Tator, is a citizen of the State of Connecticut and resides in the City of New Haven in said State. He was on August 1, 1937, designated by the Secretary of Agriculture of the United States as Market Administrator for the Greater Boston, Massachusetts, Marketing Area under the provisions of Order No. 4, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area, issued by the said Secretary of Agriculture on February 7, 1936, as amended by Amendment No. 1 to said Order, issued by the Secretary July 28, 1937, and he is now purporting to exercise all the powers and functions of such Market Administrator under the terms and provisions of said Order No. 4, as amended.
- 3. The following defendants are all citizens of the Commonwealth of Massachusetts and residents of the city or town in said Commonwealth preceding their names: in Adams: Clifton A. Burnett, Arthur Stollmann, Augustin Stollmann, Augustin Gancarz, John Jejko, Richard C. Stohlman, Frank E. Sprague; in Ashfield: Leon C. Sears, Mrs. H. A. Streeter, Hector D. Boucher, George W. Lesure, Wallace A. Ward, William H. Howes, Donald W. Lilly, Archie H. Jenkins, Lawrence E. Jenkins, Leon G. Howes, Mrs. Pia Gallerani, Walter A. Whitney, Wallace A. Stroliecker, Charles A. Richmond, Dr. Frank L. Wheeler, Jonathan Sears, David Fuller, Mrs. Emmett Hall, Albert L. Howes, Robert E. Williams, Leland F. Wheeler, Fred R. Townsiey, Clifton W. Scott; in N. Ashfield: Clifford N. Lilly, Harold Hartwell, George C. Field, George E. Morton, Fred K. Hillman, John Mychalak, Herbert L. Clark & Son; in Buckland: Charles W. Trow, Julius M. Cranson, Gilbert Griswold, Charles L. Hunt, Clifton L. Kenny; in Cheshire: Albert Kordana, York Jaeschke, Philip Boyer; in Charlemont: Jesse G. Thompson, Francis P. Gelipault, Roland A. Lively, Addelor Bellow, W. Carl Smith, Ramson S. Bolton, Heber Stetson, Oscar J. Lively, Herb. E. Crowingshield, Joseph Giard, Ernest C.

Wilder, Hezekiah E. Ward, Mrs. Lillian B. Hartwell, Dona J. Auge, Preston G. Warfield, Samuel R. LaBelle, Richard G. Purington, Henry H. Phillips, Harry F. Hawkes, Harold T. White, Albert L. White, George L. Rice, Ernest R. Sears, George E. Sears, Arthur H. Maynard, Le Roy T. Hunt, Fred R. Stiles, Arthur L. Hawkes, Fred J. Conley, Ray Hicks, Roy A. Hicks, William D. Pierson, Louis A. Davenport, Fred A. Fuller, James Willard, Mrs. Helen K. Stafford, Frank R. Harris, Alfred Labell, Charles H. Orr, Frank R. Harris; in Colrain: Scott E. Courser, Ruth Riggs, Calvin P. Call, Harvey Copeland, Chas. C. B. Mayer, Ernest W. Joy, Pearl L. Joy, Ralph H. Peterson, Coombs Bros., William H. Coombs, Lawrence E. Shearer, George Mislak, Oscar Fairbanks & Son, Joseph Rubin, Harry C. Lampson, Arthur L. Fish, Forest E. French, Fred Gilderdale, Sarah Riel, Edward Gadreault, Arthur P. Bolduc, Ozra A. Thompson, Nelson W. Joy, William B. Call, Nelson H. Purrington, Frank W. Fowler, Floyd N. Stone, Merrick C. Harris & Son; in Conway: Israel G. Boyden, Winscik Routousky, John Hanas, in Griswoldville: Henry A. Dwight, Byron A. Stowe, Fred Bolduc, Wilfred Lively, Fred A. Starkey, Edw. Gabreault, Alexander H. Ryan, Arthur Dean Hillman, Cleophas Lively, Walter H. King, Herbert Thibodeau, Frank A. Brown; in Hancock: Henry Blair, Leon H. Roberts; in Heath: Myron S. Hamilton & Son, Frank L. Gleason, Horatio L. Dickinson, Frederick W. Burrington, Edith I. Grant, Fred S. Coates, Anna M. Burrington: in North Heath: Medrick Lively; in Lanesboro: William S. Kessler, Charles J. Caritey, William Raney; in Lyonsville: Calvin P. Call; in New Ashford: George Bolotin, F. H. Phelps; in New Boston: Louis Albert, Dominus Competti, Frank Hyrchvich, David Pinsky, Howard Springs, Clara Snyderman, Abraham Kleiner, Mulvania Kolesnick, Ben Lincovitch, Edwin Strickland, Max Henry, Samuel Steinberg; in North Adams; Loren Estes; in Plainfield: Ernest A. Rice, Charles E. Thatcher, Cora Atherton, Admx.; in Richmond: Theodore F. Cook, Charles R. Pierce: in Rowe: Howard Liese; in Shattuckville: Ross E. Purrington; in Shelburne Falls: Joe S. Gibas, Perley C. Bronson, George L. Bailey, Earl W. Lilly, Walter R. Scott, Mrs. Roy W. Dunbar, Otis L. Field, Leon F. Goodnow, Charles Zalenski, Andrew Danilo, John M. Warga, Raymond L. Wheeler,

Herbert F. Elmer, Chas. A. Hocum, Anna Hocum, Mrs. Steve Doneilo, Church & Broadhurst, Stephen Krasnoselski, Allen A. Kendrick, Leon D. Hall, Charles C. Gray, Mrs. Elizabeth Gray, Ernest S. Barnes, Nelson D. Graves, Lewis Bates, Clayton H. Eldridge, Michael C. Warbeck, Joel Wayne Starkey, Steve Truce, Peter Stafursky, Lyman W. Dane, Luther D. Dunnell, Edmund G. Wilder, Morris D. Mitchell, Christian Finck, John Cardwell, Zerah H. Fiske & Son, Daniel P. Bardwell, Albert C. Bray & Son, William D. Long, Fred Laird, Charles S. Richardson, Charles J. Nillman, Frank W. Dyer No. 1, George L. Mayer, Walter Barnard, Frank B. Williams, Louis R. Long, Clarence W. Ryder, Stanley W. Reynolds, Philip A. Crafts, Arthur J. Hale, William Peltier, Frank Novak, Mike C. Doneilo, William H. Pfersick, Gertrude Goddard, Alfred A. Bilger, Adam C. Ewart, Lively & Lawrence Leo; in Tyringham: Raymond Taylor, Louis Hiscox; in Stockbridge: Maria A. Backus; in West Stockbridge: Joseph Keresey, Charles Kratt; in Williamstown: Jim Grady, Arthur E. Rosenburg, Donald H. Coie, Henry George, Fred Wood; in South Williamstown: Henry Comstock.

The following defendants are all citizens of the State of Vermont and residents of the city or town in said State preceding their names: in Jacksonville: Marcius A. Butterfield, Wallace S. Allen & Son, Fred Bernard; in West Halifax: Lewis A. Sumner, Leon C. La Rocke; in Whitingham: Gerald H. Wheeler, Arthur W. Kingsley. Leon O. Carpenter, Arnold B. Shippee, Bert E. Shippee; in Wilmington: Earl C. Dix.

All said defendants named in this paragraph are now, or at some time since August 1, 1937 have been, engaged in the business of producing milk and selling milk to the plaintiff, Noble's Milk Company.

4. On February 7, 1936, the Secretary of Agriculture of the United States, assuming to act under the provisions of Section 8c of the Agricultural Adjustment Act, Act of May 12, 1933 (48 Stat. 31, U.S.C. Title 7, Section 608c), as amended August 24, 1935 (49 Stat. 672), issued Order No. 4, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area, effective February 9, 1936. On July 28, 1937, the Secretary of Agriculture of the United States, assuming to act under the provisions of said Act, as reenacted and

amended in the Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public No. 137, 75th Congress), issued Amendment No. 1 to said Order No. 4, effective August 1, 1937. A copy of said Order No. 4, as so amended, marked Exhibit "A", is attached hereto and made a part hereof.

5. The defendant Samuel W. Tator, in his capacity as Market Administrator, claims that the plaintiff is a "handler" as defined in Section 8c (1) of the Act, referred to in paragraph 4, hereof, and in Paragraph 6 of Section 1 of said Order No. 4, as amended, and as such is subject to the applicable provisions of said Act and said Order, as amended, and that all milk purchased by the plaintiff is subject

to the terms and provisions of said Order, as amended.

6. Under date of August 27, 1937, the said defendant, Samuel W. Tator, in his capacity as Market Administrator, purporting to act in accordance with Article VII, Section 2 of said Order, as amended, announced a schedule of Class II prices and blended prices to be paid producers for milk delivered by them to handlers during the delivery period, August 1 to August 15, 1937. The said defendant, Samuel W. Tator, in his capacity as Market Administrator, subsequently announced schedules of Class II prices and blended prices for the delivery periods August 15 to August 31, 1937, September 1 to September 15, 1937, and September 16 to September 30, 1937, respectively.

7. Under date of September 3, 1937, said defendant, Samuel W. Tator, in his capacity as Market Administrator, notified the plaintiff that there was payable to him as Market Administrator by the plaintiff for the delivery period August 1 to August 15, 1937 the sum of \$1,823.81 for producer settlement, pursuant to paragraph 3 of Section 1 of Article VIII of said Order No. 4, as amended, and, in addition, the sum of \$117.14 for expenses of administration pursuant to Section 1 of Article X of said Order, as amended, and the sum of \$117.14 for marketing services, pursuant to Section 1 of Article IX of said Order, as amended. Said defendant made demand upon the plaintiff for payment to him on or before September 9, 1937 of an aggregate amount of \$2,058.09. Under date of September 16, 1937, said defendant notified the plaintiff that there was payable to him as Market Administrator by the plaintiff for the delivery period August

16 to August 31, 1937, the sum of \$1,957.34 for producer settlement pursuant to paragraph 3 of Section 1 of Article VIII of said Order, as amended, the sum of \$120.93 for administration expenses pursuant to Section 1 of Article X of said Order, as amended, and the sum of \$120.93 for marketing services pursuant to Section 1 of Article IX of said Order, as amended. Said defendant made demand upon the plaintiff for the payment to him on or before September 25, 1937, of an aggregate sum of \$2,199.20. Under date of October 5, 1937, said defendant notified the plaintiff that there was payable to him as Market Administrator by the plaintiff for the delivery period September 1' to September 15, 1937, the sum of \$2,715.12 for producer settlement pursuant to paragraph 3 of Section 1 of Article VIII of said Order, as amended, the sum of \$113.37 for administration expenses pursuant to Section 1 of Article X of said Order, as amended, and the sum of \$113.37 for marketing services pursuant to Section 1 of Article IX of said Order, as amended. Said defendant made demand upon the plaintiff for payment to him on or before October 10, 1937, of an aggregate sum of \$2,941.86. Under date of October 18, 1937, said defendant notified the plaintiff that there was payable to him as Market Administrator by the plaintiff for the delivery period September 16 to September 30, 1937 the sum of \$2,774.91 for producer settlement pursuant to paragraph 3 of Section 1 of Article VIII of said Order, as amended, the sum of \$114.33 for administration expenses pursuant to Section 1 of Article X of said Order, as amended, and the sum of \$114.33 for marketing services pursuant to Section 1 of Article X of said Order, as amended. Said defendant made demand upon the plaintiff for payment to him on or before October 25, 1937, of an aggregate sum of \$3,003.57. The total amount of the sums so demanded for the delivery periods from August 1 to September 30, 1937, inclusive, is \$10,202.72.

8. On October 1, 1937, a bill in equity was filed in the United States District Court for the District of Massachusetts by United States of America and Henry A. Wallace, Secretary of Agriculture, against the plaintiff herein, Noble's Milk Company, and H. P. Hood & Sons, Inc., under the provisions of Section 8a (6) of the Agricultural Adjustment Act, as amended, to enforce, and to prevent Noble's

Milk Company and H. P. Hood & Sons, Inc. from violating the provisions of Order No. 4, as amended. In said bill the plaintiffs therein allege that under the provision of Order No. 4, as amended, there is now due and owing to the Market Administrator from Noble's Milk Company the sums demanded by said market administrator for the delivery periods August 1 to August 15, 1937 and August 16 to August 31, 1937, as set out in paragraph 7 hereof. The plaintiffs therein seek a preliminary injunction commanding Noble's Milk Company to pay over to said market administrator all sums due and owing by it under the provisions of said Order, and permanent injunctions preventing Noble's Milk Company from violating the provisions of said Order, as amended, and commanding Noble's Milk Company to comply with all provisions of said Order, as amended.

9. The plaintiff herein, Noble's Milk Company, at some time during the period from August 1, 1937 to the date of this bill, has purchased milk from each of the defendants named in paragraph 3 hereof, and during such period it has continuously purchased and is now purchasing milk from most of the defendants named in said paragraph. It has purchased no milk during said period from any other producer than the defendants named in said paragraph. All such milk has been sold and delivered to the plaintiff within the Commonwealth of Massachusetts. On or about August 1, 1937 the plaintiff, pursuant to its usual practice, posted at each of its milk receiving stations a plant notice setting forth the terms and conditions on which it would purchase and pay for milk delivered to it during the first half of August. A copy of such plant notice, marked Exhibit B, is annexed hereto and made a part hereof. purchased by the plaintiff from the defendants named in paragraph 3 hereof during the delivery period August 1 to August 15 was purchased on the terms and conditions contained in said plant notice. On or about August 15, September 1 and September 15, 1937, respectively, the plaintiff posted at each of its milk receiving stations a similar plant notice setting forth the terms and conditions on which it would purchase and pay for milk delivered to it during the two-week period following the posting of such plant notices. Copies of each of

said plant notices are annexed hereto and made a part hereof and marked Exhibits C, D and E, respectively. All milk purchased by the plaintiff from the defendants named in paragraph 3 hereof during each delivery period from August 15 through September 30, 1937, was purchased on the terms and conditions contained in the plant notice applicable to that period. The plant notice posted by the plaintiff for each delivery period from August 1, 1937 through September 30, 1937, has provided that the plaintiff will pay for milk delivered by individual producers to its plants for such delivery period a guaranteed minimum price specified in said notice, but that the plaintiff is authorized to deduct each producer's proportionate part of any sums which the plaintiff is legally required to pay to the Federal Milk Administrator (meaning thereby the Market Administrator for the Greater Boston, Massachusetts, Marketing Area) or pays pursuant to an order of any court in connection with litigation concerning said order, in respect of milk delivered during such period. In each delivery period from August 1, 1937 as to which the defendant Samuel W. Tator, as Market Administrator, has computed and announced a blended price, as set out in paragraph 6 hereof, the guaranteed minimum price contained in the plant notice for the corresponding period has been higher than such blended price.

10. The plaintiff has made payments to each defendant named in paragraph 3 hereof who sold and delivered milk to it during the delivery periods of August 1 to August 15, August 16 to August 31, September 1, to September 15, and September 16 to September 30. Because of the claim of the defendant Samuel W. Tator that the plaintiff is a 'handler' as defined in paragraph 6, Section 1 of Article I of Order No. 4, as amended, and that under the terms and provisions of said Order No. 4, as amended, it is legally obligated to pay the sums already demanded by him, as set forth in paragraph 7 hereof, the plaintiff, in making payments to the defendants named in paragraph 3 hereof for deliveries of milk from August 1 to September 30, did not pay to such defendants the guaranteed minimum price specified in the plant notice for the applicable delivery period but made deductions from said price. In each of the delivery periods August 1 to August 15, 1937 and August 16 to August

31, 1937 it paid to each of said defendants named in paragraph 3 hereof, from whom it had purchased milk during the period, the blended price computed and announced for the period by the defendant Samuel W. Tator, as Market Administrator, payable to producers not members of a cooperative association as defined in said Order No. 4, as amended. The net price paid to each producer on this basis was the guaranteed minimum price less his proportionate part of the total amount demanded for the period in question from. the plaintiff, Noble's Milk Company, by the defendant Samuel W. Tator, as Market Administrator, as set forth in paragraph 7 hereof: In the delivery period September 1 to September 15, 1937, the plaintiff paid to each of said defendants named in paragraph 3 hereof from whom it had purchased milk during the period the said blended price payable for the period to producers not members of a cooperative association as defined in said Order No. 4, as amended, plus 11.3 cents per hundredweight. In the delivery period September 16 to September 30, 1937 the plaintiff paid to each of the defendants named in paragraph 3 hereof the blended price payable for the period to producers not members of a cooperative association as defined in said Order No. 4, as amended, plus 12 cents per hundredweight. The plaintiff, in making said payments, stipulated, and each producer receiving it agreed, that if the plaintiff should pay to the defendant Samuel W. Tator as Market Administrator, the sums demanded by him, it might offset the respective amounts of 11.3 cents and 12 cents paid in excess of the blended price in making ayments to said producers for subsequent deliveries.

11. A claim has been made and is now made against the plaintiff Noble's Milk Company on behalf of all the defendants named in paragraph 3 hereof that all said defendants are entitled to the full price guaranteed in the plant notices, set out in paragraph 9 hereof, for the delivery periods from August 1 to September 30, 1937; that the plaintiff was and is without authority to make any deductions from said price under the terms of said plant notices; that the plaintiff is not legally required to pay any sums to the defendant Samuel W. Tator as Market Administrator in respect to milk sold to the plaintiff by said defendants named in paragraph 3 hereof, and that

the said defendants named in paragraph 3 hereof are entitled to recover the amounts deducted in making payments to them for the delivery periods August 1 to September 30, 1937, as set forth in paragraph 10 hereof, and to retain, without any liability to refund to the plaintiff, the sum per hundredweight in excess of the blended price paid for delivery periods September 1 to September 15 and September 16 to September 30, as set out in paragraph 10 hereof.

12. The plaintiff now has in its possession the sum of \$10,202.72, being the total amount demanded from it by the defendant Samuel W. Tator, as Market Administrator, as set out in paragraph 7 hereof, and as to which the defendants named in paragraph 3 hereof are

asserting the claims set out in paragraph 11 hereof.

13. By reason of the conflicting claims of the said defendant, Samuel W. Tator, as Market Administrator, and of the said defendants named in paragraph 3 hereof, the plaintiff Noble's Milk Company is in great doubt as to which is entitled to the sum of \$10,202.72 now in its hands, and under the circumstances is in great danger of being harassed by vexatious litigation and cannot safely pay the sums demanded by the defendant Samuel W. Tator, to him as Market Administrator, or to the defendants named in paragraph 3 hereof, without the aid of this court.

14. The plaintiff, Noble's Milk Company, has paid into the registry of this court the sum of \$10,202.72, being the amount demanded by the defendant Samuel W. Tator as Market Administrator, as due and owing to him under the provisions of Order No. 4, as amended as set out in paragraph 7 hereof, to abide the judgment of this

court.

15. So long as Order No. 4, as amended, continues in force, further amounts will become due from the plaintiff Noble's Milk Company under its terms and provisions. The plaintiff is informed and believes and, therefore, alleges that the defendant Samuel W. Tator, so long as he is Market Administrator, will continue to make demands on the plaintiff for payment to him of all amounts becoming due under said Order No. 4, as amended, and that the defendants named in paragraph 3 hereof, or such of them as continue to sell and deliver milk to the plaintiff, will continue to assert that the

Plaintiff is not legally obligated to pay to the defendant Samuel W. Tator, as Market Administrator, any amounts hereafter coming due under the terms and provisions of said Order No. 4, as amended, and is without authority to deduct all or any part of such amounts from payments due to them in respect to milk sold and delivered by them to the plaintiff. In the event of such conflicting claims of the said defendant, Samuel W. Tator, as Market Administrator, and of the defendants named in paragraph 3 hereof, the plaintiff will be in doubt as to whether to make payments to the defendant Samuel W. Tator, as Market Administrator, of amounts coming due under the terms and provisions of said Order No. 4, as amended, and will continue to be in danger of being harassed by multiple and vexatious litigation and will be unable safely to pay to the defendant Samuel W. Tator, as Market Administrator, any amounts which may hereafter be so demanded by him, without the aid of this court.

16. The plaintiff, Noble's Milk Company, will pay into the registry of this court all sums hereafter demanded by the defendant Samuel W. Tator, under the terms and provisions of said Order No. 4, as amended, to abide the judgment of the court.

Wherefore, the plaintiff prays:

1. That said Samuel W. Tator, as Market Administrator, and the defendants named in paragraph 3 hereof be decreed to interplead and that it may be determined in such manner as this court shall direct to which of them the sum of \$10,202.72 already deposited in the registry of this court and such sums as may be hereafter paid into the registry of this court pursuant to paragraph 16 of this bill

ought to be paid.

2. That the said Samuel W. Tator, as Market Administrator, and the defendants named in paragraph 3 hereof be temporarily enjoined from instituting or further prosecuting in any state or federal court any suit against the plaintiff, Noble's Milk Company, to require said plaintiff, Noble's Milk Company, to pay all or any part of the sums deposited or to be deposited in the registry of this court by said plaintiff pursuant to paragraphs 14 and 16 of this bill, and that such temporary injunction be made permanent by final decree in this cause.

3. That the plaintiff, Noble's Milk Company, be released and discharged from all further liability to the defendant Samuel W. Tator and to the defendants named in paragraph 3 of this bill in respect to any amounts already deposited in the registry of this court demanded by any of said defendants and, upon deposit of any amounts hereafter pursuant to the provisions of paragraph 16 of this bill, in respect to such amounts.

4. That the plaintiff be awarded all other, further and different

relief as to this court may seem just and proper.

NOBLE'S MILK COMPANY
By Edwin L. Noble
Vice-President and Treasurer

Ropes Gray Boyden & Perkins Charles B Rugg

Solicitors for the plaintiff

Commonwealth of Massachusetts

Suffolk, ss.

Edwin L. Noble, being first duly sworn, deposes and says that he is the Vice President and Treasurer of Noble's Milk Company, the plaintiff in the foregoing bill of interpleader; that he is duly authorized to make oath to the same; that he makes this affidavit on behalf of the plaintiff in the foregoing bill of interpleader; that he has read the foregoing bill and knows the contents thereof; and that the same is true as of his own knowledge, except the matters stated to be on information and belief, and as to those matters he believes them to be true.

Vice President and Treasurer of Nobles' Milk Company

Subscribed and sworn to before me this 28th day of October, 1937.

Warren F. Farr

Notary Public

EXHIBIT B.

PLANT NOTICE

To Noble Producers:

The Secretary of Agriculture has issued an order which purports to govern prices to be paid to producers eligible to ship milk to the Boston Market. The order is effective August 1, 1937. Following our custom of some months past, we are quoting a price for August milk subject to such adjustments as the order may require.

Noble's Milk Company will pay for the first half of August, 1937 for all milk delivered by individual producers to this plant, not less than \$2.47 per cwt. net for 3.7% milk with a butterfat differential based on the value of fat in cream less 8 cents per pound, but in no event less than the prices fixed in the Order equalized among producers of Noble's Milk Company. From said guaranteed minimum price of \$2.47 per ewt. net, Noble's Milk Company is authorized to deduct each producer's proportionate part of any sums which Noble's Milk Company is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection wih litigation concerning said Order, in respect of milk delivered in said period. No producer shall be entitled to recover from Noble's Milk Company the amount of any such deductions based on payments actually made by Noble's Milk Company to the Federal Milk Administrator, or pursuant to such a court order, on ground that the exaction of such payments from Noble's Milk Company was illegal or unconstitutional. If any payments so made, on the basis of which 'Noble's Milk Company has made deductions, are unconditionally repaid to Noble's Milk Company, it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice

will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

Noble's Milk Company regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

Noble's Milk Company

August 1, 1937.

EXHIBIT C.

PLANT NOTICE

To Noble Producers:

The Secretary of Agriculture has issued an order which purports to govern prices to be paid to producers eligible to ship milk to the Boston Market. The order purports to become effective August 1, 1937. Following our custom of some months past, we are quoting a price for milk for the last half of August as set forth below.

Noble's Milk Company will pay for the last half of August, 1937 for all milk delivered by individual producers to this plant, not less than \$2.52 per cwt: net for 3.7% milk with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than the prices fixed in the Order equalized among producers of Noble's Milk Company. From said guaranteed minimum price Noble's Milk Company is authorized to deduct each producer's proportionate part of any sums which Noble's Milk Company is legally required to pay for the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. No producer will be entitled to recover from Noble's Milk Company the amount of any such deductions based on payments actually made by Noble's Milk Company to the Federal Milk Administrator, or pursuant to such a court order, on the ground that the exaction of such payments from Noble's Milk Company was illegal or unconstitutional. If any payments so made, on the basis of which Noble's Milk Company has made deductions, are unconditionally

repaid to Noble's Milk Company, it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Board of Health where the Company sells milk, and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

Noble's Milk Company regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

NOBLE'S MILK COMPANY

August 16, 1937

EXHIBIT D.

PLANT NOTICE

To Noble Producers:

Noble's Milk Company will pay for the first half of September, 1937 for all milk delivered by individual producers to this plant, not less than \$2.47 per cwt. net for 3.7% milk with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than the prices fixed in the Order equalized among producers of Noble's Milk Company. From said guaranteed minimum price Noble's Milk Company is authorized to deduct each producer's proportionate part of any sums which Noble's Milk Company is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. No producer will be entitled to recover from Noble's Milk Company the amount of any such deductions based on payments actually made by Noble's Milk Company to the Federal Milk Administrator, or pursuant to such a court order, on the ground that the exaction of

such payments from Noble's Milk Company was illegal or unconstitutional. If any payments so made, on the basis of which Noble's Milk Company has made deductions, are unconditionally repaid to Noble's Milk Company, it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Board of Health where the Company sells milk, and comply with all provisions of applicable laws. In the case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

Noble's Milk Company regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

NOBLE'S MILK COMPANY

September 1, 1937

EXHIBIT E.

PLANT NOTICE

To Noble Producers:

Noble's Milk Company will pay for the last half of September, 1937 for all milk delivered by individual producers to this plant, not less than \$2.47 per cwt. net for 3.7% milk with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than the prices fixed in the Order equalized among producers of Noble's Milk Company. From said guaranteed minimum price Noble's Milk Company is authorized to deduct each producer's proportionate part of any sums which Noble's Milk Company is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. No producer will be entitled to recover from Noble's Milk Company

the amount of any such deductions based on payments actually made by Noble's Milk Company to the Federal Milk Administrator, or pursuant to such a court order, on the ground that the exaction of such payments from Noble's Milk Company was illegal or unconstitutional. If any payments so made, on the basis of which Noble's Milk Company has made deductions, are unconditionally repaid to Noble's Milk Company, it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Board of Health where the Company sells milk, and comply with all provisions of applicable laws. In case of strikes of other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions:

Noble's Milk Company regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producess will recognize the business necessity of that provision.

NOBLE'S MILK COMPANY

September 16, 1937

On the nineteenth day of November, A. D. 1937, a memorandum of the court was announced, a preliminary injunction to be entered pending a hearing on the merits, defendants' and plaintiff's requests for rulings being denied except insofar as consistent with memorandum.

On the twenty-fourth day of November, A. D. 1937, supplemental findings of fact was filed to become part of the memorandum, dated November 19, 1937.

On the thirtieth day of November, A. D. 1937, a supplemental memorandum was filed,

Thereupon, to wit, November 30, 1937, the following Decree for Temporary Injunction was entered:

DECREE FOR TEMPORARY INJUNCTION. November 30, 1937.

SWEENEY, J. This cause having come on to be heard on the twenty-ninth day of October, 1937, on the application of the plaintiffs for a temporary injunction, and the cause having been argued by counsel,

Now, therefore, it is ordered, adjudged, and decreed:

- (1) That the defendants, their agents, officers, employees, successors, and assigns be and they hereby are restrained and enjoined from violating any of the provisions of Order No. 4 as amended, regulating the handling of milk in the Greater Boston Marketing Area, during the pendency of this suit or until further order of this court.
- (2) That the defendants are hereby commanded and directed to pay to the market administrator within seven days after the entry of this decree, (a) the amounts found by this court to be now due and owing by the said defendants under the provisions of Order No. 4 as amended and specified in the findings made by this court herein, and (b) all other amounts which are now due and owing by the said defendants under the provisions of said Order No. 4 as amended.
- (3) That the defendants are hereby commanded and directed hereafter to pay to the market administrator all amounts which may hereafter become due and owing under the provisions of Order No. 4 as amended during the pendency of this suit, the said payments to be made in the manner and at the times prescribed by said Order No. 4 as amended.
- (4) That the defendants, their agents, officers, employees, successors, and assigns be and they hereby are commanded and directed to comply with all of the provisions of said Order No. 4 as amended during the pendency of this suit or until further order of this court.

GEO. C. SWEENEY,

United States District Judge.

11-30-37.

From the foregoing decree for temporary injunction on the thirtieth day of November, A. D. 1937; H. P. Hood & Sons, Inc.,

and Noble's Milk Company, defendants, both claimed appeals to the United States Circuit Court of Appeals for the First Circuit, and security on appeals being waived by the plaintiffs, said appeals were allowed by the court on the same day.

[MEMORANDUM. An appeal record was duly certified by the Clerk of the United States District Court and entered in the United States Circuit Court of Appeals for the First Circuit at the October Term, 1937, to wit, March 15, 1938 and entitled No. 3325, H. P. Hood & Sons, Inc., et al., Defendants, Appellants v. United States of America, et al., Plaintiffs, Appellees. James S. Allen, Clerk.]

On the thirtieth day of November, A. D. 1937, it was ordered by the court, the Honorable George C. Sweeney, District Judge, sitting, that an application of the defendant, H. P. Hood & Sons, Inc., for supersedeas pending appeal be denied.

Also on the thirtieth day of November, A. D. 1937, it was ordered by the court, the Honorable George C. Sweeney, District Judge, sitting, that an application of the defendant Noble's Milk Co., for

supersedeas pending appeal be denied.

On the third day of December, A. D. 1937, applications are made by both defendants to the Honorable George H. Bingham, United States Circuit Judge, for supersedeas pending appeal. This cause was thence continued to the December Term, A. D. 1937, when, to wit, December 8, 1937, the following Orders were entered:

ORDER FOR SUPERSEDEAS AS TO NOBLE'S MILK COMPANY.
December 8, 1937.

In the above-entitled cause it is

Ordered, adjudged and decreed that a supersedeas shall be and hereby is allowed staying and superseding the operation of said preliminary injunction pending the decision on appeal therefrom, only in so far as it commands and directs and otherwise requires Noble's Milk Company to pay to the market administrator all amounts now due and owing and hereafter to become due and owing under the provisions of Order No. 4 as amended, excepting from

this order of supersedeas payments due or to become due under Article 10, Section 1 of Order No. 4, upon condition that Noble's Milk Company file a bond in the sum of twenty-five thousand (25,000) dollars, conditioned as required by law, surety to be approved by the District Court for the District of Massachusetts.

GEORGE H. BINGHAM, United States Circuit Judge.

ORDER FOR SUPERSEDEAS AS TO H. P. HOOD & SONS, INC.
December 8, 1937.

In the above-entitled cause it is

Ordered, adjudged and decreed that a supersedeas shall be and hereby is allowed staying and superseding the operation of said preliminary injunction pending the decision on appeal therefrom only in so far as it commands and directs and otherwise requires the defendant-appellant H. P. Hood & Sons, Inc. to pay to the market administrator all amounts now due and owing and hereafter to become due and owing under the provisions of Order No. 4 as amended, excepting from this order of supersedeas payments due or to become due under Article 10, Section 1 of Order No. 4, upon condition that the amounts of said payments now due and as they accrue from time to time shall be paid, to be held pending the final determination of this appeal and subject to the further order of the Circuit Court of Appeals for this Circuit into the registry of the District Court.

GEORGE H. BINGHAM, United States Circuit Judge-

At the same term, to wit, December 23, 1937, the following Order Appointing Special Master was entered:

ORDER APPOINTING SPECIAL MASTER.

December 23, 1937.

[MEMORANDUM. The same order was entered in Equity Cases numbered 4519, 4520, 4521, 4522, 4523, 4524, 4525, 4526, 4527, 4528, 4529, 4530, 4531, 4532, 4533, 4534, 4535, 4536, 4537, 4538, 4539, 4540, 4541, 4542, 4543, 4544, 4547, 4548, 4549 and 4550. James S. Allen, Clerk.]

SWEENEY, J. It appearing to the court that special conditions so

require, it is

Ordered that these causes be referred to William A. Loughlin, of Gardner, Massachusetts, as special master to hear the parties and their evidence and to make and report to the court his findings of fact.

It is further ordered that the special master proceed as expeditiously as practicable, and that said hearings shall begin January 1, 1938, at 10 A. M., and shall continue from day to day until completed; that he may sit anywhere within this district as he may determine, or elsewhere by consent of the parties; that his compensation shall be at the rate of one hundred dollars per day, said compensation and expenses to be paid by the parties in the proportions set forth in the stipulation herein filed this day.

By the Court:

JOHN E. GILMAN, Jr., Deputy Clerk.

12-23-37

GEO. C. SWEENEY.

At the same term, to wit, December 30, 1937, it was ordered by the court, the Honorable George C. Sweeney, District Judge, sitting, that E. Frank Branon be allowed to intervene as party defendant.

Also at the same term, to wit, January 3, 1938, the following Answer of the Intervening Defendant, E. Frank Branon, was filed:

ANSWER OF THE INTERVENING DEFENDANT, E. FRANK BRANON.

[Filed January 3, 1938.]

- 1. This defendant admits the allegation in paragraph 1 of the bill of complaint that Henry A. Wallace is the Secretary of Agriculture of the United States, but is ignorant of the other facts alleged in said paragraph and leaves the plaintiffs to the proof of the same, if material.
- 2. This defendant admits the allegations in paragraph 2 of the bill of complaint.
 - 3. This defendant has no knowledge of the facts alleged in para-

graph 2(a) of the bill of complaint, and leaves the plaintiffs to proof of the same, if material.

4. This defendant admits the allegations contained in paragraph

3 of the bill of complaint.

5. This defendant admits the allegations contained in paragraph

4 of the bill of complaint. .

6. This defendant has no knowledge of the facts alleged in paragraph 5 of the bill of complaint, but leaves the plaintiffs to proof of the same, if material.

7. This defendant admits the allegation contained in paragraph 6 of the bill of complaint that the Secretary of Agriculture issued an order regulating the handling of milk in the Boston Area, effective February 9, 1936, a copy of which order is annexed to the bill of complaint and marked "Exhibit B", but this defendant denies the remaining allegations contained in said paragraph 6 of the bill of

complaint.

- 8. This defendant has no knowledge as to whether the purpose of said Order No. 4 is as stated in paragraph 7 of said bill of complaint, but he denies that said Order No. 4 has effected the purpose there alleged. And further answering this paragraph, this defendant says that said Order tends to lower and impair the price received by producers of milk who, by reason of geographical location and otherwise, are legitimately entitled to share in the fluid milk market in the Boston Area, and to depress the purchasing power of such producers; and that producers newly shipping milk into the Boston Area, as well as those who are not economically justified in seeking to ship milk into said area, are given an unfair equality with producers having established outlets for the sale of milk in said area.
- 9. This defendant has no knowledge of the facts alleged in paragraph 8 of the bill of complaint, and leaves the plaintiffs to proof of the same, if material.
- 10. This defendant admits the allegations in paragraph 9 of the bill of complaint that said Order No. 4 was continuously in effect from the effective date thereof until August 1, 1936; that the Secretary of Agriculture purported to suspend the further operation of said Order on August 1, 1936; and that a copy of the order purport-

ing to suspend said Order No. 4 is attached to the bill of complaint, marked "Exhibit C". This defendant denies that the action of the Secretary suspended said Order No. 4, and says that said Order No. 4 was terminated on August 1, 1936.

- the Acting Secretary of Agriculture purported to terminate the said order of suspension effective July 1, 1937, and that a copy of the order terminating the order suspending said Order No. 4 is attached to the bill of complaint marked "Exhibit D". And further answering the allegations contained in this paragraph, the defendant denies the authority of the Acting Secretary of Agriculture and the Secretary of Agriculture to reinstate Order No. 4, and says that said Order No. 4 had been terminated and abandoned, that during the period between August 1, 1936 and June 25, 1937, no attempt was made by the Secretary of Agriculture to enforce said Order No. 4, and that by June 25, 1937, said Order No. 4 had lapsed and was not capable of being reinstated.
- 12. This defendant denies the allegation contained in paragraph 11 of the bill of complaint that all interested parties were afforded an opportunity to be heard on the proposed amendment, and says that a large number of producers and a large number of handlers living in areas far removed from the places set for hearing were not afforded a fair opportunity to be heard on the proposed amendment. This defendant admits all the other allegations contained in paragraph 11 of the bill of complaint.
- 13. Answering the allegations contained in paragraph 12 of the bill of complaint, this defendant admits that the Secretary purported to issue an amendment to said Order No. 4, effective August 1, 1937, a copy of which Order, as amended, is attached to the bill of complaint and marked "Exhibit E". This defendant denies all the other allegations in paragraph 12 of the bill of complaint. And further answering, this defendant says that Order No. 4 was not in existence on August 1, 1937, and, therefore, could not be amended.
 - This defendant denies the allegations contained in paragraph
 of the bill of complaint. This defendant is informed and believes

and, therefore, alleges that a substantial number of producers who had not complied with the health regulations applicable to milk sold for consumption in the Boston Area and who were not producers within the definition of "producer" contained in said Order No. 4 were permitted themselves to vote or to have votes cast in their behalf by cooperative associations claiming them as members; that notices to producers of the time, place and purposes of the referendum were inadequate in point of time; that the polling places designated for the referendum were inconvenient and inaccessible to a substantial number of producers; that in some instances the polling places were closed prior to the announced closing time; and that a substantial number of producers were not afforded a fair and reasonable opportunity to vote.

15. This defendant denies the allegations contained in paragraph 14 of the bill of complaint.

16. This defendant has no knowledge of the allegations contained in paragraph 15 of the bill of complaint, and leaves the plaintiffs to

proof of the same, if material.

- 17. Answering the allegations of paragraph 16 of the bill of complaint, this defendant admits that the defendant H. P. Hood & Sons, Inc. is engaged in the business of receiving, buying, processing, selling and distributing milk, and is a "handler" of milk as defined in the Act and in Order No. 4 as amended. This defendant denies the constitutionality and validity of the Act and of the Order, as amended, and denies that the defendant H. P. Hood & Sons, Inc. is subject thereto. This defendant has no knowledge as to the allegations contained in said paragraph of the bill of complaint as to the defendant Noble's Milk Company, and leaves the plaintiffs to proof of the same, if material.
- 18. Answering the allegations of paragraph 17 of the bill of complaint, this defendant admits the allegations contained in the first three sentences in said paragraph. As to the other allegations contained in said paragraph, this defendant has no knowledge and leaves the plaintiffs to proof of the same, if material.
 - 19. This defendant has no knowledge of the allegations contained

in paragraph 18 of the bill of complaint, and leaves the plaintiffs to

proof of the same, if material.

20. Answering the allegations of paragraph 19 of the bill of complaint, this defendant admits that milk is an article of diet which is of great importance to the public health, and that it is imperative that a reliable and adequate supply of milk be maintained. This defendant has no knowledge as to the remaining allegations in said paragraph, and leaves the plaintiffs to proof of the same, if material.

21. Answering the allegations of paragraph 20 of the bill of complaint, this defendant admits that milk production is a substantial source of farm cash income in Maine, New Hampshire, Vermont and Massachusetts. This defendant has no knowledge as to the remaining allegations contained in said paragraph, and leaves the plaintiffs to proof of the same, if material.

22. This defendant has no knowledge of the facts alleged in paragraph 21 of the bill of complaint and leaves the plaintiffs to proof

of the same, if material.

- 23. This defendant admits the allegations contained in paragraph 22 of the bill of complaint, except as to the allegation that under the Order the blended price is the minimum price and handlers are permitted to pay producers more than the blended price. This defendant is ignorant as to whether the legal effect of the Order is to permit handlers to pay more than the blended price. This defendant is informed and believes and, therefore, alleges that the defendant H. P. Hood & Sons, Inc. is financially unable to pay to the producers more than the blended price if it is obligated to make the payments to the market administrator required under the provisions of the Order. This defendant further says that the blended price is in fact the maximum price, and that the effect of the Order has been and will be to impair and reduce the price which they receive for their milk.
- 24. This defendant admits the allegations contained in paragraph 23 of the bill of complaint. And further answering the allegations contained in said paragraph, this defendant says that for many years the proportion of Class I milk purchased by the defendant H. P. Hood & Sons, Inc. to the total milk purchased by it has been greatly

in excess of the proportion of Class I milk purchased by all handlers in the Greater Boston Marketing Area to the total milk purchased by all such handlers; that the defendant H. P. Hood & Sons, Inc. has similarly purchased a higher percentage of Class I milk during each delivery period from August 1, 1937 to October 15, 1937; that except for intervals when the defendant H. P. Hood & Sons, Inc. was required to purchase milk on the basis of prices determined by market wide equalization either under Federal license or orders or due to the insistence of cooperative associations controlling practically all its supply of milk, it has in the past constantly paid prices to this defendant substantially in excess of the prices determined by market wide equalization; that the defendant H. P. Hood & Sons, Inc. has for many years insisted upon high quality and health standards in the production of milk sold it; and that this defendant has been under constant expense and effort to maintain such quality and health standards. This defendant further says that because of the fact that the defendant H. P. Hood & Sons, Inc. is a handler with relatively large Class I sales, under the terms of the Order it is required to pay to the market administrator moneys which it would otherwise pay to its own producers, including this defendant, and that, under the terms of the Order, such moneys will be distributed to other producers with whom the defendant H. P. Hood & Sons, Inc. and its producers, including this defendant, have no relations whatever, and who have not incurred the same effort and expense as this defendant in meeting the high quality and health standards imposed on its producers by the defendant H. P. Hood & Sons; Inc.

25. This defendant admits that the market administrator demanded payment from the defendant H. P. Hood & Sons, Inc., of the amounts set forth in paragraph 24 of the bill of complaint, and that the defendant H. P. Hood & Sons, Inc., has failed to pay said amounts to the market administrator. This defendant denies that the defendant H. P. Hood & Sons, Inc. owes said amounts, and says that said Order No. 4 is valid and without force of law, that the Agricultural Adjustment Act, as amended, under the terms of which the Secretary of Agriculture purported to issue Order No. 4, as amended, is invalid and unconstitutional, and that the market admining

istrator, in computing said amounts as to which demand for payment was made on H. P. Hood & Sons, Inc., included in the computation of the blended price milk which should not have been so included, excluded milk should have been included, and in other ways fell into error in making said computation. As to the other allegations in said paragraph 24, this defendant has no knowledge and leaves the plaintiffs to the proof of the same, if material.

26. This defendant has no knowledge as to the allegations con-

tained in paragraph 25 of the bill of complaint.

27. This defendant admits the allegations contained in paragraph

26 of the bill of complaint.

28. This defendant admits that the market administrator demanded that the defendant H. P. Hood & Sons, Inc. pay to him amounts set out in paragraph 27 of the bill of complaint and that the said defendant has failed to pay said amounts. This defendant denies that the defendant H. P. Hood & Sons, Inc. owes said amounts. As to the allegations contained in said paragraph 27 of the bill of complaint, this defendant has no knowledge and leaves the plaintiffs to proof of the same, if material.

29. This defendant has no knowledge as to the allegations contained in paragraph 28 of the bill of complaint and leaves the plain-

tiffs to proof of the same, if material.

30. This defendant admits the allegations contained in paragraph

29 of the bill of complaint.

31. Answering the allegations contained in paragraph 30 of the bill of complaint, this defendant admits that in the delivery periods August 1 to August 15, 1937 and August 16 to August 31, 1937, the defendant H. P. Hood & Sons, Inc. purchased milk from producers who were not members of a cooperative association, that the market administrator demanded that the said defendant pay to him the amounts set out in paragraph 30 of the bill of complaint and that said defendant has failed to pay said amounts. This defendant denies that the defendant H. P. Hood & Sons, Inc. owes said amounts. As to the other allegations contained in said paragraph 30, this defendant has no knowledge and leaves the plaintiffs to proof of the same, if material. And further answering the allegations con-

tained in said paragraph 30, this defendant says that he is a producer who is not a member of a cooperative association as defined in said Order as amended; that in the delivery periods August 1 to August 15, 1937 and August 16 to August 31, 1937, he sold milk to the defendant H. P. Hood & Sons, Inc.; that the said defendant in making payments to them for milk sold during such delivery periods deducted the amount of two cents per hundredweight as provided in section 10. Article IX of said Order as amended. This defendant further says that the market administrator supplied no information and rendered no valuable services to him that said Order, under which such deductions were made, is invalid and without force of law, that the Agricultural Adjustment Act as amended, under the provisions of which the Secretary of Agriculture purported to issue said Order is invalid and unconstitutional, and that the provisions for said deductions contained in said Order deprive him of his property without due process of law.

32. As to the allegations contained in paragraph 31 of the bill of complaint, this defendant has no knowledge and leaves the plaintiffs to proof of the same, if material.

33. This defendant denies all the allegations contained in para-

graph 32 of the bill of complaint.

34. And further answering this defendant says: This defendant is engaged in the business of producing milk and has been so engaged for many years. Since August 1, 1937, he has been and is now continuing to sell and deliver milk to the defendant H. P. Hood & Sons, Inc. and has every reasonable expectation of continuing his present business relations with said defendant and of selling and delivering milk to said defendant in the future. Since August 1, 1937, he has sold and delivered milk to said defendant under the terms and conditions of a plant notice posted by said defendant for each delivery period, in which plant notice said defendant agreed to pay for milk delivered to it a guaranteed minimum price, but reserved the authority to deduct from payments made for milk so delivered each producer's proportionate part of any sums which said defendant is legally required to pay to the market administrator. Said prices have been, and this defendant is informed and believes and, therefore, avers that

they will continue to be, in excess of the ce computed by the market administrator for the Boston Area. In coordance, as it claims, with the terms of the agreement contained in said plant notices the defendant H. P. Hood & Sons, Inc. has not paid to this defendant, in respect of milk delivered since August 1, 1937, the guaranteed minimum price set out in said plant notices but has deducted from said guaranteed price a sum which it claims is a proportionate part of the sum demanded from it by the market administrator under the terms and provisions of said Order No. 4 as amended.

Because of the invalidity of said Order No. 4, as amended, and the Agricultural Adjustment Act, as amended, under the provisions of which said Order was purported to be issued, the defendant H. P. Hood & Sons, Inc. is not legally obligated to pay to the market administrator the sums deducted from amounts due to this defendant for milk sold by him after August 1, 1937, and this defendant is entitled

to the amounts so deducted.

And further answering this defendant says: Said Order No. 4 was and is wholly null and void and of no effect for the reasons set out in paragraphs 13 and 14 of this answer, and that the Agricultural Adjustment Act as amended, under and by virtue of which the Secretary of Agriculture purported to issue said Order No. 4 as amended, is invalid and unconstitutional and beyond the powers conferred upon the Congress of the United States by the Constitution, in that: (a) Regulation of prices paid for milk to producers is not within the power granted to Congress by Article I, section 8 of the Constitution; (b) said Act is an attempt on the part of Congress to exercise powers which were reserved to the States by the Tenth Amendment to the Constitution; (c) the provisions of the Act are in violation of the Fifth Amendment of the Constitution of the United States and deprive the defendant H. P. Hood & Sons, Inc. and this defendant of their property without due process of law; (d) said Act deleg es to an administrative officer legislative powers in violation of the Constitution of the United States; and (e) said Act delegates to private citizens legislative powers in violation of the Constitution of the United States:

Wherefore this defendant prays that the temporary and permaneny

relief sought in the bill of complaint be denied and that the bill of complaint be dismissed.

MERRILL & MERRILL, ROY M. FITZMORRIS,

Solicitors for the Intervening Defendants.

This cause was thence continued from term to term to the present December Term, A. D. 1938, when, to wit, January 27, 1939, the following Report of the Special Master is filed:

REPORT OF THE SPECIAL MASTER. [Filed January 27, 1939.]

[MEMORANDUM. Here is inserted in this Transcript of Record report of the special master, comprising Volumes II and III. JAMES S. ALLEN, Clerk.]

On the twenty-eighth day of January, A. D. 1939, the following Plaintiffs' Proposed Conclusions of Law are presented together with Defendants' and Intervenor's Requests:

PLAINTIFFS' PROPOSED CONCLUSIONS OF LAW. Presented January 28, 1939.

Now come the plaintiffs in the above-entitled cause and request this court to adopt the following conclusions of law:

JURISDICTION.

1. This court has jurisdiction of this cause by reason of Section 8a (6) of the Agricultural Marketing Agreement Act of 1937 (Act of May 12, 1933, 48 Stat. 31; 7 U. S. C. A. Sect. 608a (6), as amended August 24, 1935, 49 Stat. 672, and as reenacted and amended June 3, 1937, c. 296, 50 Stat. 246).

THE CONSTITUTIONALITY OF THE AGRICULTURAL MARKETING AGREEMENT ACT.

2. The Agricultural Marketing Agreement Act of 1937 was enacted by Congress in pursuance of the power granted to it by Section I, Article VIII, Clause 3 of the Constitution to regulate commerce with

state commerce.

foreign nations and among the several states, and the Act is a valid exercise of that power.

- 3. The power of Congress to regulate commerce among the several states includes the power to regulate the price of milk which is sold or which moves in interstate commerce. The power to regulate interstate commerce also includes the power to regulate the price of milk which is sold or which moves in intrastate commerce where such milk is a part of the current of interstate commerce, or where the sale or movement of such milk is inextricably intermingled with the sale or movement of milk in interstate commerce or where such regulation is appropriate and necessary to make effective the regulation of milk sold or moving in interstate commerce, or to prevent undue and burdensome discrimination against milk moving in inter-
- 4. The power of Congress to regulate interstate commerce includes the power to regulate the price which is to be paid producers for milk produced outside the Commonwealth of Massachusetts and transported in interstate commerce into the said Commonwealth for use or disposition in the Greater Boston Marketing Area or elsewhere in the said Commonwealth. The purchase or receipt of milk at points outside the Commonwealth of Massachusetts for transportation in interstate commerce to points within the said Commonwealth is a purchase or receipt in interstate commerce and as such is subject to the regulatory power of Congress. The purchase or receipt within the Commonwealth of Massachusetts of milk which has been transported in interstate commerce into the said Commonwealth is a purchase or receipt in the current of interstate commerce and as such is subject to the regulatory of Congress.
- 5. Milk which is purchased or received from producers located within the Commonwealth of Massachusetts and sold and distributed in the Greater Boston Marketing Area becomes a part of the stream of interstate commerce in milk and its products; the sale and distribution of the milk is inextricably related to the sale and distribution of milk which moves in interstate commerce into the Boston market. The handling of such milk directly affects interstate commerce in milk in the Boston market; and the regula-

tion of the price paid to producers for such milk is appropriate and necessary to make effective the regulation of the prices paid for the milk which moves in interstate commerce into the Boston market, and to prevent undue and burdensome discrimination against interstate commerce in milk in the Boston market. It follows that the power of Congress to regulate the price paid to producers for milk which moves in interstate commerce into the Greater Boston Marketing Area includes the right to regulate the price paid to producers for milk produced within the Commonwealth of Massachusetts and sold and distributed in the Boston market.

6. The constitutional power of Congress to regulate prices, as exercised in the Agricultural Marketing Agreement Act of 1937, includes the power to provide an equitable method for the distribution of the proceeds of those prices among the persons entitled thereto. It follows that the provisions of the Agricultural Marketing Agreement Act of 1937 providing for the payment of uniform prices to all producers and associations of producers delivering milk to handlers for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, and the other provisions of the Act which authorize market-wide equalization, are a valid and legitimate exercise of the power of Congress to regulate interstate commerce.

7. The provisions of the Agricultural Marketing Agreement Act of 1937 as applied to the defendants herein do not deprive the said defendants of life, liberty, or property, and do not violate the due process clause of the Fifth Amendment.

8. The provisions of the Agricultural Marketing Agreement Act of 1937, as applied to the intervenor herein, do not deprive him of life, liberty, or property, and do not violate the due process clause of the Fifth Amendment.

9. The provisions of the Agricultural Marketing Agreement Act of 1937 provide for the fixing of minimum prices, and impose no legal prohibition on or penalty for the payment of prices higher than the minimum prices so fixed. Hence, no legal issue of confiscation can be raised by the operation of these provisions.

10. The powers vested in the Secretary of Agriculture by the

Agricultural Marketing Agreement Act of 1937 as invoked by the Secretary in this case are accompanied by a prescription in the Act of subject matter, policy, standards, and limitations upon, for, by, and in accordance with which such powers are to be exercised together with a requirement of requisite findings of fact by the Secretary precedent to the exercise of such powers and all of such powers were validly conferred by the Congress upon the Secretary of Agriculture and do not constitute an unlawful delegation of legislative authority to him.

11. The provisions of Section 8c (9) of the Act requiring the Secretary to find that at least two-thirds of the producers who, during a representative period, had been engaged in the production for market of the commodity specified favored the issuance of the order before issuing any order do not violate the due process clause of the Fifth Amendment and do not constitute a delegation of legislative power to producers.

THE VALIDITY OF THE ISSUANCE AND AMENDMENT OF ORDER No. 4.

12. The action of the Secretary of Agriculture on January 25, 1936, in finding and proclaiming that in connection with the execution of a marketing agreement and the issuance of an order regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area the purchasing power of such milk during the base period August 1909 to July 1914 could not be satisfactorily determined from the available statistics in the Department of Agriculture but that the purchasing power of such milk could be satisfactorily determined from available statistics in the Department of Agriculture for the period August 1919 to July 1929 and that the period August 1919 to July 1929 should be the base period to be used in connection with the aforesaid marketing agreement and order, was a valid and lawful exercise of the authority conferred on the said Secretary of Agriculture by the Agricultural Adjustment Act, as amended.

13. Order No. 4 regulating the handling of milk in the Greater.

Boston Massachusetts Marketing Area was duly issued by the Secre-

tary of Agriculture on February 7, 1936, in compliance with and in conformity to the applicable terms and provisions of the Agricultural Adjustment Act as amended, after notice of hearing on the proposed order, public hearings thereon, findings of fact, and determinations by the said Secretary, and approval by the President of the United States, as required by the said Act, and the issuance of the said order was a lawful exercise of the authority conferred on the said Secretary by the said Act.

- 14. The findings made by the Secretary of Agriculture and set forth in the said Order No. 4 were supported by substantial evidence adduced at public hearings held prior to the making of the said findings and the issuance of the said order.
- 15. The said Order No. 4 contained terms and conditions prescribed by the Agricultural Adjustment Act as amended, and no others.
- 16. Pursuant to and in lawful exercise of the authority vested in him by the Agricultural Adjustment Act, as amended, the Secretary of Agriculture on August 1, 1936, suspended Order No. 4 regulating the handling of milk in the Greater Boston Massachusetts Marketing Area.
- 17. Pursuant to the authority vested in him by the Agricultural Marketing Agreement Act of 1937, the Secretary of Agriculture on June 25, 1937, terminated the suspension of Order No. 4 the said termination of suspension being effective as to part of Order No. 4 as of July 1, 1937, and as to the remainder of Order No. 4 as of August 1, 1937. The said termination of suspension was a lawful exercise of the authority conferred upon the said Secretary by the. Agricultural Marketing Agreement Act of 1937.
- 18. Pursuant to the authority vested in him by the Agricultural Marketing Agreement Act of 1937 the Secretary of Agriculture on July 28, 1937, issued an amendment to Order No. 4 regulating the handling of milk in the Greater Boston Massachusetts Marketing Area which became effective on August 1, 1937, and which has been continuously in effect at all times since that date.
- 19. The amendment to Order No. 4 was duly issued by the Secretary of Agriculture in compliance with and in conformity to the appli-

Act of 1937 after notice of hearing on a proposed amendment to Order No. 4, public hearings thereon, and findings of fact and determinations by the Secretary, and approval by the President of the United States, as required by the said Act, and the issuance of the said amendment to the said Order was a lawful exercise of the authority conferred upon the said Secretary by the Agricultural Marketing Agreement Act of 1937:

20. The findings made by the Secretary and set forth in the order amending Order No. 4 were supported by substantial evidence adduced at public hearings held prior to the making of such findings

and the issuance of the said order.

21. The findings so made by the Secretary and set forth in the said order amending Order No. 4 were in addition to the findings made upon the evidence introduced at the hearings held prior to the issuance of Order No. 4 and the said original findings were ratified and approved by the Secretary at the same time that he issued the said order amending Order No. 4 except insofar as such original findings were in conflict with the findings made by the Secretary and set forth

in the said order amending Order No. 4.

Agreement Act of 1937 did not require the Secretary of Agriculture to find and proclaim again, in connection with the issuance of the order amending Order No. 4, that the purchasing power of milk handled in the Greater Boston Marketing Area could not be satisfactorily determined from available statistics of the United States Department of Agriculture during the base period August, 1909 to July, 1914, but that the purchasing power of said milk could be satisfactorily determined from available statistics of the Department of Agriculture during the base period August, 1919 to July, 1929 and that the period August, 1919 to July, 1929 should be the base period to be used in connection with ascertaining the purchasing power of milk handled in the Greater Boston Marketing Area.

23. Order No. 4 as amended contains terms and conditions prescribed by the Agricultural Marketing Agreement Act of 1937 and no

others.

- 24. Order No. 4 and each of its terms and conditions is a constitutional and lawful regulation of the handling of milk in the Greater Boston Massachusetts Marketing Area; a constitutional and lawful exercise of the power vested in Congress to regulate commerce among the several states; and a lawful exercise of the authority conferred upon the Secretary of Agriculture by the said Agricultural Marketing Agreement Act of 1937.
- 25. Order No. 4, as amended, as applied to the defendants herein has not deprived and will not deprive them of life, liberty, or property without due process of law, and has not violated the due process clause of the Fifth Amendment.
- 26. Order No. 4, as amended, as applied to the intervenor herein has not deprived and will not deprive him of life, liberty, or property without due process of law, and has not violated the due process clause of the Fifth Amendment.

THE ADMINISTRATION OF ORDER NO. 4 AS AMENDED.

- 27. S. W. Tator was duly appointed market administrator under Order No. 4 as amended by the Secretary of Agriculture and the said appointment was a lawful exercise of the authority conferred on the said Secretary by the Agricultural Marketing Agreement Act of 1937 and was made pursuant to the provisions of Order No. 4 as amended.
- 28. In computing the Class II price for each delivery period from August 1, 1937, to and including December 31, 1937, the market administrator complied with the directions contained in Section 3 of Article IV of Order No. 4 as amended.
- 29. In computing the butterfat differential for each delivery period from August 1, 1937, to and including December 31, 1937, the market administrator complied with the directions contained in Section 3 of Article VIII of Order No. 4 as amended.
- 30. In computing the blended price for each delivery period from August 1, 1937, to and including December 31, 1937, the market administrator complied with the provisions of Order No. 4 as amended.
- 31. In determining what milk should be included and what milk excluded in the computation of the blended price for each delivery

period from August 1, 1937, to and including December 31, 1937, the market administrator acted in compliance with the provisions of Order No. 4 as amended. The adjustments made by the market administrator, as described in paragraphs 184 to 187 of the master's report, to charge back to certain handlers milk reported by the said handlers which had theretofore been included in the computation of the blended price for certain delivery periods, were made in compliance with the provisions of Order No. 4. In the case of the Wells River and Salisbury plants of New England Dairies, Inc., which were included in the computation of the blended price for each delivery period between August 1, 1937 and December 31, 1937, it appears that no similar adjustment has been made. It further appears, however, that in certain delivery periods these plants shipped no milk or cream into the Boston Marketing Area. The market administrator therefore should make such an adjustment to charge back to New England Dairies the milk received at the Wells River plant in the delivery periods of August 1-15 and August 16-31, 1937, when the plant shipped no milk or cream into the Boston market. The market administrator should likewise make a similar adjustment to charge back to New England Dairies the milk received at the Salisbury plant in the delivery periods September 16-30 and December 16-31, 1937, when that plant shipped no milk or cream into the Boston market. In the case of both plants the adjustments should be made in the manner described in paragraphs 184 to 187 of the master's report.

32. The master's report shows that the market administrator concluded that during certain delivery periods the Hoosick, Irona, and Cummings plants of New England Dairies, Inc. were not licensed for the shipment of fluid milk by any of the cities or towns in the marketing area. He, therefore, made adjustments to charge back to New England Dairies, Inc. any milk which it reported as having been received at these plants and which had been included in the computation of the blended price for any delivery period prior to this conclusion. In each delivery period after this conclusion the market administrator also excluded from the computation of the blended price all milk reported by New England Dairies, Inc. as having been received at these plants. It now appears from the master's report

that in fact New England Dairies was licensed by the City of Somerville to sell and distribute fluid milk received by New England Dairies, Inc. at all of as plants, including its plants at Hoosick, Cummings, and Irona. The fluid milk received by New England Dairies, Inc. at its Hoosick, Irona, and Cummings plants should not have been excluded from the computation of the blended price in any delivery period on the sole ground that New England Dairies, Inc. was not licensed by any local health authority in the marketing area to sell and distribute fluid milk from those plants. The market administrator, therefore, should make such adjusting entries on his books and take such other steps as may be necessary to include in the accounts of New England Dairies, Inc. all of the milk received by New England Dairies, Inc. at its plants at Irona, Cummings, and Hoosick, in each of the delivery periods from August 1, 1937, to and including December 31, 1937, in which the plant in question shipped any milk or cream into the marketing area.

33. Under Order No. 4, as amended, the cost of the milk received by the defendants herein, and by any other handler in each delivery period, is determined by multiplying the amount of milk so received by the minimum prices fixed by Article IV of the Order. The equalization payments required to be made by Paragraph 3 of Section 1 of Article VIII of Order No. 4, as amended, do not increase or otherwise affect the cost of a handler's milk but are only a method by which the total value of all the milk in the equalization pool is distributed among all producers participating in the pool. The blended price is a factor in determining the amount of the equalization payments made by each handler, but not a factor in determining the cost of milk to each handler. It follows that neither the manner of computing, nor the amount of milk excluded or included in the computation of the blended price can inflict any legal injury upon the defendants or any other handlers and neither the defendants herein nor any other handler have a legal interest which entitles them to attack the manner of computing the blended price, or action taken in excluding or including milk in that computation.

34. The method used by the market administrator in computing a

bill and statement for each of the defendants herein for each delivery period from August 1, 1937, to and including December 31, 1937, complied with the provisions of Order No. 4, as amended. The adjustments made by the market administrator in the bills rendered to the defendants herein for certain delivery periods were likewise made in compliance with the provisions of Order No. 4, as amended. The amounts billed by the market administrator to H. P. Hood & Sons, Inc., as charges to its producer settlement account, which are set forth in the table contained in paragraph 236 of the master's report, are now due and owing by the said H. P. Hood & Sons, Inc. The amounts billed by the market administrator to Noble's Milk Company, as charges to its producer settlement account, which are set forth in the table contained in paragraph 236 of the master's report, are now due and owing by the said Noble's Milk Company.

35. For each delivery period since August 1, 1937, the market administrator should recompute a blended price using the same class prices that were used in making the original computation for each such delivery period, and using the same method of computation which was used in making the original computation for each such delivery period except that in any instance in which that method is inconsistent with the views expressed in these conclusions of law, the market administrator shall adopt a method of computation consistent with the views expressed herein. For the purpose of this recomputation, the market administrator shall for each delivery period use the reports of the defendants herein and of any other handlers of milk in the Boston market which are available to the market administrator, provided that the defendants herein and the said other handlers shall have paid to the market administrator at the time of the said recomputation the amounts shown in the bills rendered to them by the market administrator as due and owing by reason of charges against their producer settlement accounts for the particular delivery period in question.

36. The determination made by the market administrator that 2 cents per hundredweight should be deducted by each handler from the payments made to producers, not members of a cooperative association qualified under the Capper-Volstead Act, and the amount of such

deductions paid to the market administrator, to be used by him to provide certain marketing services for producers was made pursuant to authority conferred on the market administrator by Article IX of Order No. 4, as amended, and was a lawful and proper exercise of that authority. The method used by the market administrator to compute the amount to be deducted by the defendants herein in each delivery period between August 1, to and including December 31, 1937, and paid to the market administrator for use in providing the said marketing services, complied with the said provisions of Article IX of Order No. 4, as amended. The amounts so computed by the market administrator with respect to H. P. Hood & Sons, Inc., shown in the table contained in paragraph 237 of the master's report under the heading "Marketing Service" are now due and owing with respect to each of the said delivery periods. The amount so computed by the market administrator with respect to Noble's Milk Company, shown in the table contained in paragraph 237 of the master's report under the heading "Marketing Service" is now due and owing with respect to each of the said delivery periods.

37. Inasmuch as the deduction of 2 cents per hundredweight, referred to in paragraph 36 above, is made from amounts paid directly to producers and is not a charge on the defendants H. P. Hood & Sons, Inc. and Noble's Milk Company, the said defendants have suffered no legal injury by reason of the said deduction and have no legal interest which entitles them to complain of or to attack the said deduction.

38. The determination made by the market administrator that each handler should pay to the market administrator 2 cents per hundred-weight with respect to all milk delivered to him during each delivery period by producers, or produced by him, to be used by the market administrator to pay the pro rata share of the expense of the administration of Order No. 4, as amended, was made pursuant to authority conferred upon the market administrator by Article X of Order No. 4, as amended, and was a lawful and proper exercise of that authority. The method used by the market administrator to compute the amounts owing by each of the defendants herein in each of the delivery periods from August 1, 1937, to and including December 31, 1937, as its pro-

rata share of the expense of the administration of Order No. 4, as amended, complied with the said provisions of Article X of the said Order. The amount so computed as owing by H. P. Hood & Sons, Inc. for each such delivery period shown in paragraph 239 of the master's report has been paid by H. P. Hood & Sons, Inc. to the market administrator pursuant to the interlocutory decree entered herein by this court. The said payments so made to the market administrator discharged an obligation imposed by the provisions of Order No. 4, as amended. The amount so computed as owing by Noble's Milk Co. for each such delivery period shown in paragraph 239 of the master's report has been paid by Noble's Milk Co. to the market administrator pursuant to the interlocutory decree entered herein by this court. The said payments so made to the market administrator discharged an obligation imposed by the provisions of Order No. 4, as amended.

THE DEFENDANTS.

- 39. The defendants H. P. Hood & Sons, Inc. and Noble's Milk Company are handlers as defined in Order No. 4, as amended, and are subject to the provisions of the said order, and of the Agricultural Marketing Agreement Act of 1937.
- 40. Both H. P. Hood and Sons, Inc. and Noble's Milk Company are engaged in purchasing, receiving, and handling milk in interstate commerce. In addition to these activities, each of the said defendants also receives and sells in the Commonwealth of Massachusetts a certain amount of milk which is produced on farms located within the said Commonwealth. The receipt and handling of the milk so received by the said defendants in the Commonwealth of Massachusetts directly affects interstate commerce and is closely and inextricably related to the interstate commerce in milk, carried on by both of the said defendants. Regulation of the intrastate transactions of the said defendants in milk is necessary if regulation of their interstate transactions is to be effective.

THE INTERVENOR.

41. If any contractual rights are conferred upon the intervenor by the plant notices under which the intervenor has delivered milk to

the plant of H. P. Hood and Sons, Inc. at Fairfield, Vermont, in each delivery period from August 1, 1937 to and including December 31, 1937, those contractual rights came into existence after the date on which Order No. 4, as amended, became effective and after the date on which the Agricultural Marketing Agreement Act of 1937 became effective. It follows that neither Order No. 4, as amended, nor the Agricultural Marketing Agreement Act of 1937 has impaired or abrogated any existing contractual rights of the intervenor.

42. The terms and provisions of the said plant notices do not impose any binding legal obligation upon H. P. Hood and Sons, Inc. to pay any amounts of money to the intervenor in the event that either Order No. 4, as amended, or the Agricultural Marketing Agreement

Act of 1937 is held to be illegal or unconstitutional.

- 43. Even if it is assumed, however, that the said plant notices impose a binding legal obligation upon H. P. Hood & Sons, Inc. to pay certain sums of money to the intervenor in the event that either Order No. 4, as amended, or the Agricultural Marketing Agreement Act is held to be illegal or unconstitutional, that circumstance does not give the intervenor any legal interest which has been or will be injured or impaired by the enforcement of Order No. 4, as amended, or the said Act.
- 44. The intervenor has no legal interest which entitles him to intervene in this cause or which has been or will be injured or impaired by the enforcement of Order No. 4, as amended, or the Agricultural Marketing Agreement Act of 1937.

CONCLUSIONS.

45. The defendants H. P. Hood & Sons, Inc. and Noble's Milk Co. have violated the provisions of Order No. 4, as amended, and the Agricultural Marketing Agreement Act of 1937 by failing and refusing to make the payments required by the said Order and the said Act.

46. The plaintiffs are entitled to a permanent injunction requiring the defendants H. P. Hood & Sons, Inc. and Noble's Milk Company

to comply with all the provisions of Order No. 4, as amended.

47. The petition of the intervenor for leave to intervene in this cause should be dismissed.

: Respectfully submitted,

HUGH B. COX, JAMES C. COX,

Special Asst's to Attorney General.
JOHN A. CANAVAN,

United States Attorney.

[MEMORAND M. The defendants' requests also applied to equity cases numbered 4520, 4521, 4522, 4529, 4530, 4539, 4540, 4543, 4544 and 4550. JAMES S. ALLEN, Clerk.]

DEFENDANTS' REQUESTS FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Presented January 28, 1939.

Request 1. The Agricultural Adjustment Act of 1933 as amended and reenacted by the Agricultural Marketing Agreement Act of 1937 is an unconstitutional delegation to the Secretary of Agriculture of the legislative power conferred upon the Congress in Article I, Section 1, and Article I, Section 8, paragraph 8 of the Constitution.

Request 2. The Agricultural Adjustment Act of 1933 as amended and reenacted by the Agricultural Marketing Agreement Act of 1937 deprives these defendants of their property without due process of law, contrary to the Fifth Amendment, by delegating legislative power to a group of private persons, representing only a portion of the industry affected, who may exercise it arbitrarily.

Request 3. The Agricultural Adjustment Act of 1933 as amended and reenacted by the Agricultural Marketing Agreement Act of 1937, as interpreted by the Secretary in promulgating the amended order, deprives these defendants of their property, without due process of law, contrary to the Fifth Amendment, by delegating to a small group of officials managing cooperative associations the power to make effective an order binding all handlers and producers.

Request 4. The defendants who are handlers have a real and genuine interest in the sums demanded under Article VIII, Section 1.

paragraph 3 of the amended order. The blended price announced by the administrator under Article VII of the Order is the price fixed by Congress. The so-called "Minimum prices" fixed by Article IV of the Order are merely the formula by which the blended price is determined. The price of a commodity is the consideration paid by the purchaser to the seller for the transfer of title. The additional amounts, payments of which are here sought under the guise of equalization payments, marketing services and administration expense, are not in any true legal sense component parts of the blended price.

Request 5. Sections 8c (5) (B) (ii) and 8c (5) (C) of the Act as applied by Order No. 4, as amended, deprive these defendants of property without due process of law in violation of the Fifth Amendment to the Constitution.

Request 6. Sections 8c (5) (B) (ii) and 8c (5) (C) of the Act as applied by Order No. 4, as amended, take the property of these defendants without just compensation in violation of the Fifth Amendment to the Constitution.

Request 7. The Act is not an attempt to regulate interstate commerce but it is an attempt to fix prices to be paid to farmers, a power reserved to the States under the Tenth Amendment.

Request 8. Fixing prices of articles purchased for shipment in interstate commerce is not a regulation of interstate commerce within the power granted by the commerce clause of the Constitution but is a power reserved to the States under the Tenth Amendment.

Request 9. Order No. 4, as amended, is invalid because there was no valid order subsisting which could be amended.

Request 10. Original Order No. 4 was invalid because the Secretary did not comply with the provisions of the Act with respect to matters precedent to the issuance of such Orders or with the regulations of the Department of Agriculture governing the holdings of hearings and the issuance of such an order in each of the following respects:

(a) The notice of public hearing on proposed Order No. 4 was invalid.

(b) The hearing held in pursuance thereto was not in accordance with the regulations and was not in accordance with the requirements of "due process" of the Fifth Amendment.

(c) The Secretary did not properly make the findings which were a necessary condition precedent to tentative approval of

Order No. 4.

Request 11. The provisions of the original Order No. 4 were not supported by evidence properly adduced at the hearings.

Request 12. The purported suspension of Order No. 4 was in fact

and in law a termination thereof.

Request 13. The purported termination of the order suspending Order No. 4 was invalid and void for each of the following reasons:

(a) Because the Secretary failed to hold hearings and to make findings with respect to the same.

(b) Because the "termination of suspension" was not author-

ized by Section 3c (16) (A).

(c) Because the reinstatement of only a part of the original

Order was an invalid proceeding.

(d) Because the procedure as to the provisions which the Secretary purported to amend and make effective August 1, 1937 was invalid.

Request 14. The notice of public hearing on the proposed amendments was invalid.

Request 15. The admission of further evidence after the hearings on the amendments had closed and without affording defendants an opportunity to cross-examine or to meet it, and the introduction of the record of the hearing held on original Order No. 4 deprived the defendants of the hearing granted by sections 8c (3) and 8c (4) of the Act, and renders void the findings of the Secretary and the amendments issued on the basis thereof.

Request 16. The Secretary did not make the findings which were a necessary condition precedent to the tentative approval of the Amended Order.

Request 17. The provisions of the Amended Order are not supported by evidence properly adduced at the hearings.

Request 18. The Secretary took the post-war period, August, 1919 to July, 1929 as the base period for the purposes of the amendment to Order No. 4.

Request 19. In February, 1937 and thereafter there were available to the Secretary statistics of the Department of Agriculture from which the purchasing power of milk in the pre-war base period could have been satisfactorily determined. A contrary finding by the Secretary would have been arbitrary, unreasonable and unsupported by any facts.

Request 20. The Secretary had no power under the Act to take the period August, 1919 to July, 1929 as the base period for the purposes of the amendments to Order No. 4 because he did not find and proclaim in connection with issuance of the Order amending Order No. 4 that the purchasing power of milk during the base period August, 1909 to July, 1914 could not be satisfactorily determined from available statistics of the Department of Agriculture.

Request 20a. Under Section 8c (17) of the Agricultural Marketing Agreement Act of 1937 the Secretary of Agriculture is required in connection with the issuance of amendments to an order regulating the handling of milk, if said amendments are based upon the post-war period, August, 1919–July, 1929, to make the finding and proclamation required by Section 8e of the Act, to wit: That the purchasing power of milk during the pre-war base period, August, 1909–July, 1914, "cannot be satisfactorily determined from available statistics of the Department of Agriculture". Section 8c (16) (C) is irrelevant here because it refers only to the termination or suspension of amendments to orders. The amendments to Order No. 4 issued in July, 1937, are invalid because the required finding was not made.

Request 21. The Amended Order is invalid because the Secretary's determination that the amendments were approved by more than two-thirds of the producers producing milk or its products for sale in that marketing area was arbitrary, unreasonable and based upon errors of law.

Request 22. The referendum was invalid because all producers whose milk was sold in the marketing area were entitled to vote

under the provisions of the Act and a decisive number of such producers were given no opportunity to participate in the referendum.

Request 23. The referendum was invalid because producers who delivered to stations which shipped nothing but cream to the marketing area were permitted to vote in the referendum and their votes were considered in determining the number of producers in favor of amendments.

Request 24. The referendem was invalid because many votes were counted on behalf of farmers who were not producing and delivering milk to handlers in conformity with the health regulations applicable to milk which was sold for consumption as milk in the marketing area.

Request 25. The referendum is invalid because a large number of votes were counted on behalf of producers who were not engaged in the production of milk for sale in the marketing area during May, 1937, the representative period chosen by the Secretary:

Request 26. The decisive numbers of votes cast for the members by the boards of directors of New England Milk Producers Association and New England Dairies, Inc. should have been eliminated from the referendum because the sentiment of the cooperatives could be expressed in accordance with law only by a majority of the members.

Request 27. The decisive numbers of votes cast for the members by the board of directors of New England Dairies, Inc. and its member cooperatives should have been eliminated from the referendum because the sentiment of the cooperative could be expressed in accordance with law only by a majority of the members.

Request 28. The Order is invalid in that the prices fixed therein and calculated pursuant thereto have no substantial tendency to achieve the purpose and policy of the Act.

Request 29. The Amended Order is not authorized by the Act because it purports to regulate intrastate as well as interstate provisions.

Request 30. The provision in the Amended Order for the exclusion, in the computation of the blended price, of milk of handlers who have not made equalization payments for the delivery period

next preceding but one (Article VII, Section 2, par. 1) is not in accordance with nor authorized by the Act.

Request 31. The following provisions contained in the Amended Order are invalid because not in accordance with nor authorized by the Act:

(a) The definition of "handler" contained in Article I, Section 1, Paragraph 6, is not in accordance with nor justified by the provisions of Section 8c (P) of the Act.

(b) The definition of "producer" in Article I, Section 1, Paragraph 5, is not in accordance with nor justified by any pro-

vision of the Act.

(c) The designation of a market administrator as set forth in Article II is not such selection by the Secretary of Agriculture of the agency or agencies as is provided for in Section 8c (7) (C) of the Act.

(d) The classification of milk as set forth in Article III is not such classification as is justified by the provisions of Section 8c (5) (A).

(e) The prices set forth in Article IV, Sections 1 and 2, are not such prices as are provided for in Section 8c (5) of the Act.

(f) The prices provided for in Article IV, Sections 1 and 2, are discriminatory as between associations of cooperatives and proprietary handlers, and by reason thereof are not in accordance with the provisions of Section 8c (5) (A).

(g) The Class II prices as provided for in Article IV, Section 3, are not such minimum prices as are provided for in

Section 8c (5) (A).

(h) The prices provided for in Article IV, Section 4, for sales outside the marketing area are beyond any authority conferred by Section 8c (5) (A) of the Act.

(i) The provisions of Article VII, Sections 1, 2 and 3, are

not a provision

"for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered irrespective of the uses made of such milk by the individual handler to whom it is delivered; subject in every case only to adjustments for

- a. Volume, market, and production differentials customarily applied by the handlers subject to such order,
- b. The grade or quality of milk delivered,

c. The locations at which delivery of such milk is made"

in accordance with the provisions of Section 8c (5) (B) (ii).

(i) The provisions of Article VIII, Section 4, paragraphs 3 and 4 are not such location differentials as are provided for in or justified by the provisions of Section 8c (5) (D) (ii).

(k) The provisions of Article X, Sections 1 and 2, are not in accordance with nor justified by any provision of Section

8c (5).

(1) The provisions of Article VII, Section 3, and of Article VII, Section 2, paragraphs and 6, are not in accordance with nor justified by any provision of the Act.

Request 32. The plaintiffs are not entitled to recover the sums demanded or any sum, under Article VIII, Section 1, par. 3 of the Amended Order for any delivery period for which the administrator

erroneously computed the blended price.

Request 33. The inclusion, in the computation of the blended price, of milk of producers not having certificates of registration issued pursuant to Sections 16A-16C of Chapter 94 of the General Laws of Massachusetts was improper and not in accordance with the

provisions of the Amended Order.

Request 34. The inclusion in the computation of the blended price for certain delivery periods from August 1, 1937 to November 16, 1937 of milk received by New England Dairies, Inc. at country plants not approved by any of the cities or towns in the marketing area was improper and not in accordance with the provisions of the Amended Order.

Request 35. The milk of handlers who made the payments required under Article VIII, Section 1, par. 3 of the Amended Order were improperly excluded from the computation of the blended price.

Request 36. The milk reported by New England Dairies, Inc. was

erroneously included in computing the blended prices for the delivery periods commencing September 1, 1937 and ending December 31, 1937.

Request 37. The milk reported by New England Dairies, Inc. was erroneously included in computing the blended prices for the delivery periods September 1–15, 1937 and September 16–30, 1937.

Request 38. The market administrator erroneously included in his computations the milk reported by cooperative associations qualified under the Act of February 18, 1922, known as the "Capper-Volstead Act".

Request 39. The administrator improperly included in his computations for the August, September and October periods as Class II milk, milk including skim milk sold by a handler to another handler or to a person who is not a handler who distributes milk or manufactures milk products, where such selling handler had not on or before the fifteenth day after the end of the delivery period, during which such sale was made, furnished proof satisfactory to the market administrator in support of its notification that such milk had been sold or used by such purchaser other than as Class I milk as provided by Article III, Section 2 of the Order.

Request 40. The market administrator erroneously excluded the western milk shipped into and sold as cream in the marketing area.

Request 41. The market administrator erroneously excluded in his computations for each delivery period plants shipping only cream into the marketing area.

Request 42. The market administrator erroneously included in the computation all the milk received at plants shipping less than 50 percent of their total receipts into the marketing area.

Request 43. The administrator erroneously computed the blended price for the August 1-15, August 15-31, September 15-30 and December 15-31 periods by including milk delivered to plants from one or more of which no milk or cream was shipped to the marketing area in each of the aforesaid delivery periods.

Request 44. The administrator improperly included in his computations the value of milk and of uniform prices under the provision of Article VII milk received by handlers which was sold or used in areas

outside the Greater Boston Massachusetts Marketing Area, as defined in the Order, Article I, Section 1, par. 3.

Request 45. The errors made in any given period resulted in errors in every alternate subsequent delivery period.

Request 46. The adjustments made by the market administrator did not cure the errors he had made in computing the blended price so far as they affect the obligations of the defendants.

Request 47. That the purported deduction under the terms of Article IX for moneys which shall be expended for market information and for verification of weights, sampling and testing of milk, et cetera, cannot now be collected.

Request 48. The provisions of Article X of the Amended Order are invalid and void.

Request 49. It was error for the administrator to include milk produced, handled and consumed wholly within Massachusetts in computing the blended price and in computing bills to the defendants.

Request 50. The milk thus produced, handled and consumed wholly in Massachusetts was not in the current of interstate or foreign commerce.

Request 51. The price paid for the milk thus produced, handled and consumed wholly in Massachusetts does not directly burden, obstruct or affect interstate commerce.

Request 52. It was error for the administrator to include milk received by the Whiting Company as its receiving stations at Newport, Maine and Colebrook, New Hampshire in computing the blended price and in computing bills to that defendant.

Request 53. It was error for the administrator in computing the blended price and in computing bills to these defendants to include milk purchased by the Hood and Whiting Companies at their country stations and later shipped to Boston.

Request 54. The continued failure of the Secretary of Agriculture to render a decision on the petitions filed with him under Section 8c (15) (A) prior to the commencement of this proceeding raising questions as to the validity of the Amended Order and the correctness of its administration disentitle the plaintiffs to a decree ordering payment to the market administrator of the sums alleged to be due.

Request 55. The defendant, Whitcomb Farms, Inc. is not subject to the Order Number 4 as amended.

Request 56. The Amended Order unreasonably and illegally discriminates against Massachusetts producers.

REQUESTS FOR CONCLUSIONS OF LAW BY E. FRANK BRANON, INTERVENOR.

Presented January 28, 1939.

Now comes E. Frank Branon and requests the court to make the following conclusions of law:

Request 1. The Act and its application in the Amended Order cause financial loss to the intervenor and other producers selling to the defendant H. P. Hood & Sons, Inc. and the intervenor has a real and genuine interest entitling him to challenge the constitutionality of the Act and its application in the Amended Order.

Request 2. The provisions of the Act (Sections 8c (5) (B) (ii) and 8c (5) (C)) and of the Amended Order with respect to the collection of equalization charges cause financial injury to the intervenor and the intervenor has a real and genuine interest entitling him to challenge the equalization provisions of the Order.

Request 3. The intervenor has a real and genuine interest in these proceedings because, under the terms of the contracts under which he has sold milk to the defendant H. P. Hood & Sons, Inc., that defendant is under a binding legal obligation to pay to him the difference between the blended price announced by the administrator and the price posted by the defendant for each delivery period if the defendant is not required to make equalization payments for such periods under the provisions of the Amended Order.

Request 4. The provisions of the Act and the Amended Order with respect to the collection from payments to be made by handlers to producers of amounts to be expended for marketing services cause finacial loss to the intervenor as a producer selling to the defendant, H. P. Hood & Sons, Inc., and the intervenor has a real and genu-

ine interest in resisting the collection of such amounts from such defendant.

Request 5. The provisions of the Act (Sections 8c (5) (B) (ii) and 8c (5) (C)) and of the Amended Order (Article VIII) providing for equalization on the basis of a market-wide pool, take the property of the intervenor and of other producers selling to the defendant H. P. Hood & Sons, Inc. without due process of law in violation of the Fifth Amendment.

Request 6. Section 8c (5) (E) of the Act, as applied in Article IX of the Amended Order, providing tor deductions from payments to producers for marketing services, takes the property of the intervenor and other producers selling to the defendant H. P. Hood & Sons, Inc. without due process of law in violation of the Fifth Amendment to the Constitution.

Request 7. Payment to the market administrator of sums now deposited in the Registry of the District Court, which have been deducted pursuant to Article IX of the Amended Order from payments due to the intervenor for milk sold will deprive the intervenor of his property without due process of law in violation of the Fifth Amendment since the market administrator has not rendered and cannot now render the marketing services for which such sums were deducted.

Request 8. The provision of Article VII, Section 1, par. 1 of the Amended Order requiring the market administrator to exclude from the computation of the blended price of milk of handlers who have not made producer settlement payments for milk received during the delivery period next preceding but one is invalid because not authorized by the Act, and that provision has caused and will cause financial loss to the intervenor and all other producers similarly situated.

In addition to the above conclusions of law the intervenor joins in all the requests for conclusions of law submitted on behalf of the defendants in all cases before this court except Request No. 3.

Respectfully submitted,

EDWARD L. MERRILL,
Attorney for E. FRANK BRANON, Intervenor.

Said cause is thereupon set down for hearing on the pleadings and the master's report on February 1 and 2, 1939, and is fully heard by the court, the Honorable George G. Sweeney, District Judge, sitting.

Said cause is thence taken under advisement and on February 23, 1939, an opinion of the court is announced, upholding the constitutionality of the Act and the validity of the Amended Order No. 4 and granting mandatory injunctions to the plaintiffs.

On the twenty-seventh day of February, A. D. 1939, a supplemental opinion is announced.

On the ninth day of March, A. D. 1939, the following Defendants' Waiver on certain issues is filed:

DEFENDANTS WAIVER. [Filed March 9, 1939.]

Come now H. P. Hood & Sons, Inc., and Noble's Milk Company, the defendants in the above-entitled action, and by their attorneys hereby waive their requested conclusions of law numbered 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45 and 46 and admit only for the purposes of this case that the method of computing the blended price for the delivery periods between August 1, 1937 and January 16, 1939, adopted by the market administrator, was justified by the terms and provisions of Order No. 4 as amended on July 28, 1937, except in so far as said market administrator included in his computations the milk received by handlers from producers who did not have certificates of registration issued pursuant to Sections 16A-16C of Chapter 94 of the General Laws of Massachusetts, which act or acts the said defendants do not admit to have been justified by the aforesaid amended order. The foregoing waiver and admission is made for the purposes of this proceeding only and without prejudice to any right, of the said defendants to question in any proceedings other than this cause the lawfulness of such a method or methods of computation.

By their Attorneys,

CHARLES B. RUGG, ROPES, GRAY, BOYDEN & PERKINS. Also on the said ninth day of March, A. D. 1939, it is ordered by the court, the Honorable George C. Sweeney, District Judge, sitting, that Samuel W. Tator, market administrator, be made party plaintiff for the limited purpose of complying with decree to be hereafter entered.

Thereupon, to wit, March 9, 1939, the following Final Decree is entered:

FINAL DECREE. March 9, 1939.

This cause came on to be heard on the report of a special master appointed by this court to take evidence and find the facts in the above-entitled cause. All parties being represented by counsel and the court having heard the arguments, considered the master's report, and being fully advised in the premises, it is ordered, adjudged and decreed:

- 1. That the master's report be and hereby is confirmed.
- 2. That plaintiffs' objections to paragraphs 192 to 218 of the master's report be and hereby are overruled.
- 3. That defendants' requests for conclusions of law be and hereby are denied, except in so far as they are consistent with the conclusions of law heretofore stated by this court in this cause.
- 4. That the defendants, their agents, officers, employees, successors and assigns, be and they hereby are permanently restrained and enjoined from violating any of the provisions of Order No. 3 as amended by the amendments issued in July 28, 1937, regulating the handling of milk in the Greaten Boston Marketing Area.
- 5. That the defendants, their agents, officers, employees, successors and assigns, be and they hereby are commanded and directed to comply with all the provisions of Order No. 4 as amended by the amendments issued on July 28, 1937:
- 6. That the defendants are hereby commanded and directed to pay within ten (10) days, after the entry of this decree any and all amounts heretofore billed to each of the said defendants by the market administrator under Order No. 4 as amended July 28, 1937, for each delivery period between August 1, 1937, and January 15,

1939, and such further amounts which have not heretofore been paid into the registry of this court but which are now due and owing under the provisions of Order No. 4 as amended by the amendments issued on July 28, 1937, to the market administrator appointed under Order No. 4 as amended, for him to hold and to distribute in accordance with the following paragraphs of this decree.

7A. That the market administrator appointed under Order No. 4 as amended shall determine and certify forthwith to the clerk of this court the amounts of the marketing service charges withheld from producers under Article IX of said Amended Order and paid into the registry of this court in compliance with the decree entered in this cause on November 30, 1937, as modified and superseded by the decree and order entered on June 24, 1938, by the United States Circuit of Appeals for the First Circuit (97 F. (2d) 677).

mentioned in paragraph 7A hereof the clerk of this court shall pay to the said market administrator the amounts shown in said certificate.

7C. That the said market administrator shall distribute to the producers from whom such sums were withheld the amounts received by him from the clerk of this court pursuant to paragraph 7B hereof, by paying such amounts to the handlers to whom the producers, entitled to the distribution under this paragraph, sold or delivered their milk during the delivery periods August 1, 1937 to January 15, 1939, in such manner as is determined by the market administrator to be necessary in order to insure such payments being received by such producers.

8A. That the market administrator shall recompute and publicly announce forthwith and in no event more than ten (10) days after the entry of this decree the blended price for each delivery period between August 1, 1937 and January 15, 1939, both inclusive, following the method of computation prescribed by Order No. 4 as amended on July 28, 1937, as heretofore applied by said market administrator, except only as, with respect to issues not determined in this cause, he shall have been directed to change the same by an order entered upon a petition for review filed under Section 8c (15) of the Agricultural Marketing Agreement Act of 1937, and using the same

class prices that were used for such delivery periods, and correcting such factual errors as may have been revealed prior to such recomputation by his audits of handlers books and records, and including in the recomputation for each such delivery period the value of the milk of every handler who at the date of said recomputation shall have filed with said market administrator the report required under Article V of Order No. 4 as amended on July 28, 1937 for the delivery period for which said recomputation is made, and deducting such a sum in his recomputation for each such delivery period as will result in such a blended price as will enable the said market administrator at once to liquidate from moneys either paid to him for such delivery period or paid for such delivery period into the registry of this court all payments which may become due and owing on his part either under Article VIII of the aforesaid Amended Order or under paragraph 10 hereof.

eriod the producer settlement account of each handler whose milk was included in the recomputation for such delivery period with the difference between the blended price as originally computed, plus any applicable differentials pursuant to Section 4 of Article VIII of Order No. 4 as amended on July 28, 1937, and the blended price as recomputed, plus any applicable differentials pursuant to Section 4 of Article VIII of Order No. 4 as amended on July 28, 1937, for such period times the quantity of milk received by the handler in such period from producers not required to be paid for such period pursuant to Paragraph 2 of Section 1 of Article VIII of said Amended Order.

8C. That the market administrator shall credit each handler's account with the amount of all sums paid into the registry of this court in this cause by reason of charges against their producer settlement accounts less one per centum of all amounts paid by such handler into the registry of this court.

8D. That the market administrator shall first apply the credit or credits entered to each handler's account against any outstanding debit balance due to said administrator from such handler under Order No. 4 as amended on July 28, 1937, and shall then determine

the amount of any credit or credits remaining to each handler's account after such offsets shall have been made.

8E. That the market administrator shall file with the clerk of this court and deliver upon the day of the filing to each defendant a certificate showing,

- (a) the amount of the recomputed blended price for each delivery period,
- (b) the amount of the credit or credits entered to the producer settlement account of each defendant,
- (c) the amount of any credit remaining to the producer settlement account of each defendant after making the set-offs referred to in paragraph 8D hereof,
- (d) the amount of any payments or advances made by each defendant to producer required to be paid under Article VIII, Section 1, paragraph 1 of Order No. 4 as amended on July 28, 1937, in excess of the amounts required to be paid to such producers on the basis of the blended price as originally computed and announced for each such delivery period.
- 9. That within ten (10) days after the filing with the clerk of this court of the certificates referred to in paragraph 8E hereof the clerk of this court shall pay to the market administrator appointed under Order No. 4 as amended all moneys which have been deposited in the registry of this court by the defendants in compliance with the decree entered in this cause on November 30, 1937, as modified and superseded by the decree and order entered on June 24, 1938, by the United States Circuit Court of Appeals for the First Circuit (97 F. (2d) 677), less such amounts as shall have been retained by the clerk of this court pursuant to U.S.C. Title 28, Sec. 555 (8) and less such amounts as shall have been paid to the said market administrator pursuant to paragraph 7B hereof, to hold and to distribute in accordance with paragraphs 10 and 11 hereof.
- 10. That the market administrator upon receipt of moneys referred to in paragraph 9 hereof forthwith shall pay to each handler the amount of the credit or credits to such handler's accounts remaining

after the offset required by paragraph 8D hereof in the following manner: first, he shall pay all or the necessary portion of such , amount to each handler in whatever manner he shall determine to . be necessary in order to insure that the producers required to be paid by such handler pursuant to Article VIII, Section 1, paragraph 1 of Order No. 4 as amended on July 28, 1937, will receive those sums which will, when add to the sums such producers have previously received for or on account of milk delivered in each such delivery period, result in the payment to such producers of an amount not less than that required on the basis of the recomputed blended price for each delivery period; and second, he shall pay to each such handler any remaining portion of such credit or credits so that each such handler will receive to his own use any amounts not in excess of said credits which he shall have advanced to such producers for any and all such delivery periods over and above the amounts which he owed such producers on the basis of the blended price as originally computed.

- 11. That the market administrator shall retain and use in accordance with the provisions of Order No. 4 as amended, that part of the moneys referred to in paragraph 9 hereof which shall remain after he shall have made the payments required by paragraph 10 hereof.
- 12. That the prayer for relief in the answer of E. Frank Branon, intervenor, be and the same is hereby denied.
- 13. All charges and collections made under U.S.C. Title 28, Section 555 (8) shall be borne by the defendants.

GEORGE C. SWEENEY,

United States District Judge.

From the foregoing final decree, the defendants, H. P. Hood & Sons, Inc. and Noble's Milk Company, and E. Frank Branon, intervenor, claim appeals to the United States Circuit Court of Appeals for the First Circuit, appeal bonds being waived.

MEMORANDUM OF UNITED STATES DISTRICT COURT. RE PRELIMINARY INJUNCTION.

[November 19, 1937; amended November 24, 1937 and further amended November 30, 1937.]

Sweeney, J. This case is before me on the plaintiffs' application for a preliminary injunction. It is one of thirty cases which were argued simultaneously. The facts differ in many of the cases and are being treated separately.

FINDINGS OF FACT.

The defendants have a principal place of business in Massachusetts, and are engaged in handling milk, either in the current of interstate commerce, or in such a manner that it directly burdens, obstructs or affects interstate commerce in that commodity.

A continuous flow of fresh milk into the Boston Area, which includes thirty-seven cities and towns, from rural New England is imperative. From the urban viewpoint, it is a matter of real necessity. From the producers' viewpoint, it provides a dependable market for their product, and is an important source of income to them. Less than 12 per centum of the milk brought into the Boston Area originates in Massachusetts, and less than 2 per centum of it is handled exclusively in intrastate commerce.

From 1929 to 1933, the prices paid for milk to the producers of New England declined steadily. In 1936 the price paid to producers of Vermont was 34 per centum below the 1929 level. Conditions in other states were comparable.

Effective regulation has in the past proven to be a boon to milk producers. Heretofore, when federal regulation has failed, a resumption of chaotic marketing conditions and a lowering of price levels have occurred. Experience teaches that a resumption of such conditions will occur if the defendants and others similarly situated are permitted to avoid complying with the law as it exists.

The defendants contend that irreparable damage will be suffered by compulsory payments to the marketing administrator if it later develops that the Marketing Agreement Act, Order No. 4, or action taken thereunder is unconstitutional, in that there is no method provided for recovery of payments which the law exacts. This argument has no appeal to this court primarily because the money that the handler is called upon to pay to the administrator is essentially money which has accrued to the defendant as the result of the act itself.

As a matter of fact, certain of the handlers (i.e. those who are able to dispose of the bulk of their goods at fluid, or Class I prices) will acquire and enjoy a distinct advantage over their less fortunate competitors if payments to the marketing administrator can be avoided or delayed. The money which the defendants are called upon to pay to the administrator must be distributed by him to other handlers in order that they may comply with the section of the act which calls for payment of a blended price to the producers. Obviously, if payments are not made to the marketing administrator there can be no payments made by him to the handlers who dispose of the bulk of their property at non-fluid or Class II prices. It is not in the public interest to foster such a condition.

On November 30, 1935, the Secretary of Agriculture, acting under Section 8b and 8c (3) of the act, as amended, notified handlers of a proposed marketing agreement and order thereunder to regulate the handling of milk in the Boston Area.

Public hearings were held at St. Johnsbury, Vermont, on December 10 and 11, 1935, and at Boston, Massachusetts, on December 12, 1935, in accordance with the terms of that notice. Less than 50 per centum by volume of the milk marketed in the area approved and signed the agreement.

On February 7, 1936, in conformity with Section 9, the Secretary of Agriculture, with the approval of the President of the United States, determined

- (a) that the refusal, by the handlers, to sign such an agreement tended to prevent the effectuation of the policy of the act, and
- (b) that the issuance of an order was the only practical means of advancing the interests of producers, and
- (c) that at least two-thirds of the producers, engaged in the business, approved such an order,

and issued Order No. 4 regulating the handling of milk in the Boston Area. All findings and determinations necessary thereto having been made, the order became effective on February 9, 1936.

On August 1, 1936, a suspension of Order No. 4 was declared by the Secretary of Agriculture. On June 25, 1937, this suspension was terminated, the termination so far as it related to Articles I, II, III, V, VI (Sec. 1) XII, XIII, XIV, XV, XVI, being effective on July 1, 1937, and, so far as it related to the remaining provisions of the Order, being effective on August 1, 1937.

† On July 27, 1937, in accordance with the provisions of Section 8c (3) and 8c (17) of the Act, the Secretary, with the approval of the President, amended Order No. 4 to be effective August 1, 1937.

Notwithstanding that the law is in effect now, these defendants have failed to comply with the act and order thereunder in that they have failed to make payments to the marketing administrator under Paragraph 3 of Section 1 of Article VIII of Order No. 4, as amended, in the following sums for the periods stated:

* * * * * * * * * * * * * * * * * * * *	Hood	Noble
August 1 to 15, 1937\$29	,452.28	3,205.72
August 16 to 31, 1937 32	2,463.42	3,147.22
September 1 to 15, 1937 40	5,945.52	4,185.20
September 16 to 30, 1937 40	5,869.31	4,315.35

There is also owed by these defendants under Section 1 of Article X of Order No. 4, as amended, the following sums for the periods stated:

Hood August 1 to 15, 1937 \$1,927.50	Noble \$117.14
August 16 to 31, 1937 2,008.96	120.93
September 1 to 15, 1937 1,931:02	. 113.37
September 16 to 30, 1937 1,927.43	114.33

There is also owed by these defendants under Section 1 of Article IX of Order No. 4, as amended, the following sums for the periods stated:

	Hood	loble
August 1 to 15, 1937	\$1,900.13	17.14
August 16 to 31, 1937	1,980.67 1	20.93

	Hood	Noble
September 1 to 15, 1937	1,905.22	113.37
September 16 to 30, 1937	1,900.75	114.33

None of the foregoing sums have been paid by these defendants to the marketing administrator.

This Act was designed to meet a public necessity. The status of the public interest should be preserved until the Supreme Court has passed upon the many questions raised by these defendants. Such a preservation cannot be had by allowing those who should contribute, to retain moneys from the administrator, which, under the Act, belong to other handlers or their producers.

CONCLUSIONS.

That Congress has not provided a mode of redress in the event that the Act is declared unconstitutional is not new or fatal to the Act. It is not the duty of this court to pass upon the type or wisdom of legislation enacted by the Congress. There is a strong presumption that all legislative enactments are constitutional. Ogden v. Saunders, 25 U. S. 213, 270; Union Pac. R. R. v. U. S., 99 700, 718; Knox v. Lee, 79 U. S. 457; In re Jones, 10 F. Supp. 165, 166. There is also a well recognized principle of law that inferior courts should hesitate to declare acts unconstitutional until it appears clearly that Congress has exceeded its authority.

From the study that I have made of the Act and to the order thereunder in connection with the thirty cases before me, I am of the opinion that stripped of its presumptions of constitutionality and unattended by limitations of propriety, the Agricultural Marketing Agreement Act of 1937 and Order No. 4 thereunder are valid exercises of the constitutional powers of Congress to regulate interstate commerce.

The authority of a state to establish any regulation of, or create a burden upon, traffic in interstate commerce has been expressly denied in *Baldwin* v. *Seelig*, 294, U. S. 511, wherein Mr. Justice Cardoza, citing the *International Textbook Co.* v. *Pigg case*, 217 U. S. 91, 112, stated: "It is the established doctrine of this court that a state may not in any form or under any guise, directly burden the

prosecution of Interstate business." This would likewise apply to any regulation of interstate commerce.

If this authority is denied to the states, I think it can be fairly said that it must exist in the Congress. The Supreme Court has repeatedly stated that the power to regulate interstate commerce among the several states is supreme and plenary. See Minnesota Rate Case, 230 U. S. 352, 398, wherein it was stated that it is "complete in itself and may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution. Gibbon v. Ogden, 9 Wheat. 1, 196."

In Labor Board v. Jones & Laughlin, 301 U. S. 1, 36, 37, the court stated: "The fundamental principle is that the power to regulate commerce is the power to enact 'all appropriate legislation' for 'its protection and advancement' (The Daniel Ball, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (Mobile County v. Kimball, 102 U. S. 691, 696, 697); 'to foster, protect, control and restrain.' Second Employers' Liability Cases, 223 U. S. 1, 47. See Texas & N. O. R. Co. v. Railway Clerks, 281 U. S. 548. That power is plenary and may be exerted to protect interstate commerce no matter what the source of the dangers which threaten it'."

This act seeks to regulate commerce among the several states, and chooses as its mode of regulation the fixing of minimum prices to be paid for the product in interstate commerce. In Carter v. Carter Coal Company, 298 U. S. 238, the majority of justices found it unnecessary to pass directly on the question whether Congress has the right to fix a minimum price to be paid for a commodity moving, in interstate commerce, but, in the minority opinion, Mr. Justice Cardozo, with the approval of three other justices, stated, at page 326, that prices in interstate transactions "must therefore be subject to the power of the nation unless they are to be withdrawn altogether from governmental supervision". No case has been called to my attention in which the Supreme Court of the United States has expressed a contrary view.

See also United States v. Buttrick, 91 F. (2d) 66, 68, wherein Mr. Justice Bingham stated: "It is apparent from a reading of these

provisions that neither Section 8b nor Section 8c (1) and its subdivisions have any direct relation to the control or regulation of agricultural production, but solely to the marketing of milk and certain fruits bought and sold in interstate commerce—a matter within the exclusive control of Congress and not of the states."

If the power exists in the Congress to establish minimum prices for commodities moving in interstate commerce, I can find no exercise of that power either in the Act, Order No. 4 or the actions thereunder which would result in the deprivation of property without due process of law. See Nebbia v. N. Y., 291 U. S. 502, 523.

I am therefore of the opinion that the plaintiffs are entitled to the preliminary injunctions asked for in the first two prayers of their

bill of complaint, pending a hearing on the merits.

The defendants' requests for rulings of law are denied except in so far as they are consistent with the above. The plaintiffs' requests for rulings of law are denied except in so far as they are consistent with the above.

A separate order is today being made with reference to the completion of pleadings and for an early trial on the merits.

SUPPLEMENTAL FINDINGS OF FACT. November 24, 1937.

Sweeney, J. The following findings of fact are hereby incorporated into and become a part of the memorandum, dated November 19, 1937.

On September 9, 1937, there was brought in the Superior Court and the Supreme Judicial Court of the State of Maine in and for the County of Franklin, a suit in equity entitled Alonzo P. Richards v. H. P. Hood & Sons, Inc., et al., and Samuel W. Tator, market administrator, numbered 307, in which suit, on September 9, 1937, there was issued ex parte by Hon. William H. Fisher, a judge of said Superior Court, a temporary restraining order against H. P. Hood & Sons, Inc., in accordance with the prayers in the bill of complaint, restraining it from paying to Samuel W. Tator, market administrator, any sum or sums claimed by him to be payable to him from and by H. P. Hood & Sons, Inc., with respect to or for

the periods August 1 to August 15, 1937, and August 16 to August 31, 1937, under or by virtue of Order No. 4, as amended. The bill of complaint in said suit in equity and the said restraining order, having been offered in evidence, are incorporated herein by reference.

On October 11, 1937, there was brought in the Superior Court and the Supreme Judicial Court of the State of Maine in and for the County of Franklin, a suit in equity entitled Alonzo P. Richards v. H. P. Hood & Sons, Inc., et al., and Samuel W. Tator, market administrator, numbered 308, in which suit, on October 11, 1937, there was issued ex parte by Hon. William H. Fisher, a judge of said Superior Court, a temporary restraining order against H. P. Hood & Sons, Inc., in accordance with the prayers in the bill of complaint, restraining it from paying to Samuel W. Tator, market administrator, any sum or sums claimed by him to be payable to him from and by H. P. Hood & Sons, Inc., with respect to or for the periods September 1 to September 15, 1937, September 16 to September 30, 1937, and October 1 to October 11, 1937, under or by virtue of Order No. 4, as amended. The bill of complaint in said suit in equity and the said restraining order, having been offered in evidence, are incorporated herein by reference.

On October 29, 1937, the defendant Noble's Milk Company filed in this court a bill of interpleader, docket No. 4556, under the provisions of the Act of Congress of January 20, 1936, c. 3, § 11, U.S.C. Title 28, Sec. 41 (26); making parties thereto the said market administrator and producers of milk whom, it alleged, were all the producers from whom it purchased milk from August 1, 1937, to October 29, 1937, and paid into the registry of this court the sum of \$10,202.72, being the total amount demanded by the market administrator from Noble's Milk Company under the provisions of Order No. 4, as amended, for the period August 1 to September 30, 1937. On November 8, 1937, pursuant to paragraph 16 of said bill of interpleader, Noble's Milk Company deposited in the registry of this court the sum of \$4,796.17, as being the total amount demanded by the market administrator from Noble's Milk Company under the provisions of Order No. 4, as amended, for the period October 1

to October 15, 1937. The bill and the docket entries in said case are incorporated by reference herein.

The defendant H. P. Hood & Sons, Inc., through its attorneys, offered in open court to pay all sums now demanded by the said market administrator as due under the terms and provisions of said Order No. 4 as amended, and all sums that hereafter become due during the pendency of this cause and the effective continuance of said Order No. 4, as amended, into the registry of this court or to The First National Bank of Boston, as trustee, to be held pending the final determination of this cause, and to be paid to said market administrator, or his successors in office, if and when it shall be finally determined in this cause that the defendant H. P. Hood & Sons, Inc. is legally obligated to make such payment, otherwise to be returned to the defendant H. P. Hood & Sons, Inc.

On September 9, 1937, the defendants H. P. Hood & Sons, Inc. and Noble's Milk Company, pursuant to the provisions of Section 8c, subsection 15A of the Agricultural Marketing Agreement Act of 1937, filed with the plaintiff Henry A. Wallace, Secretary of Agriculture, petitions seeking administrative relief and exemption under the provisions of and obligations arising from Order No 4, as amended. Said petitions, offered in evidence, are incorporated by reference herein. Ten days of hearings were had on said petitions. The Secretary of Agriculture has no yet made any ruling upon the prayers of the petitions.

OPINION AND ORDER OF THE UNITED STATES CIRCUIT COURT
OF APPEALS, CONTINUING THE SUPERSEDEAS

Issued by Bingham, J. June 24, 1938.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIRST CIRCUIT

October Term, 1937.

No. 3325.

H. P. Hood & Sons, Inc., et al., Defendants, Appellants,

United States of America et al., Plaintiffs, Appellees.

No. 3326.

Whiting Milk Company v. Same.

No. 3327.

W. P. Ellictt Company v. Same.

No. 3328.

Green Valley Creamery, Inc., v. Same.

No. 3329.

Seven Oaks Dairy Company v. Same.

No. 3330.

A. J. Robinson v. Same.

No. 3331.

William J. Martines et al v. Same.

Appeals From the District Court of the United States for the District of Massachusetts.

Before Wilson, Morton and Mahoney, JJ.

PER CURIAM AND ORDER OF COURT.

June 24, 1938.

Per Curiam. These cases on appeal to this court involve the validity of a temporary mandatory injunction issued by the District Court ordering the several defendants to comply with Order No. 4 issued by the Secretary of Agriculture under the Marketing Agreement Act, and requiring each of them to pay to the market administrator under the Act all amounts now due and owing, and hereafter to become due and owing under said Order No. 4.

We think the temporary mandatory injunction should continue in force until the final determination of the cases on their, merits, but inasmuch as the several defendants before this court have raised objections to the validity of Order No. 4, and to the authority of the Secretary to issue such an order under the Act, and the several objections do not appear to this court to be frivolous and without merit; and whereas the payments to the market administrator by the several defendants of the sums computed to be due under said Order No. 4, if said Order should be found to be invalid on appeal, would work irreparable hardship to each of the defendants, since if once distributed in accordance with Order No. 4 by the market administrator among the several producers of the milk, such payments could

not be recovered by the defendants; and whereas a judge of this court issued a supersedeas staying and superseding the operation of the temporary mandatory injunction pending decision on appeal therefrom, but only in so far as it commands and directs and otherwise requires the several defendants to pay to the market administrator all amounts now due and owing, and hereafter to become due and owing, under the provisions of Order No. 4 as amended (excepting, however, from the operation of the order of supersedeas all payments due or to become due under Section 1 of Article X of Order No. 4) upon condition that the amount of said payments now due and as they become due from time to time, shall be paid, pending the final determination of this appeal, and subject to the further order of this court, into the registry of the District Court of Massachusetts; and whereas the evidence has been all taken out for presentation of the several cases on the merits,

Therefore, it is ordered that the supersedeas order issued in each case by a judge of this court shall be continued pending the final determination on appeal of the several cases on their merits; also excepting from this order continuing the supersedeas the payments due and to become due the market administrator under Section 1 of Article X of Order No. 4. The bond of Noble's Milk Company filed in the District Court will remain in full force, conditioned as required by law, but shall be void provided Noble's Milk Company shall pay into the registry of the District Court of the District of Massachusetts all sums now due and hereafter to become due from it under the provisions of said Order No. 4, excepting the payments due and to become due the market administrator under Section 1 of Article X of Order No. 4.

OPINION. February 23, 1939.

Equity No. 4519.

United States of America, and Henry A. Wallace, Secretary of Agriculture,

H. P. Hood & Sons, Inc. and Noble's Milk Company.

Equity No. 4520, Same r. The Whiting Milk Company. Equity No. 4521, Same v. W. P. Elliott Company.

Inc.
E. Burr.
Company.
pany.

SWEENEY, J. Thirty actions filed by the plaintiffs were heard together on the question of a temporary mandatory injunction. This court entered a decree ordering the defendants to comply with Marketing Order No. 4, as amended, during the pendency of this suit. United States of America, et al. v. Whiting Milk Co., 21 F. Supp. 321.

The cases were then referred to a special master with directions to hear the parties and their evidence, and to make and report his findings of fact to the court. Hearings were held beginning on January 4, 1938, and were recently concluded. The master's report was filed on January 27, 1939.

The only question pertaining to the master's report is raised by the plaintiffs who object to the inclusion of paragraphs 192 to 218 of the report on the grounds that they are immaterial and irrelevant. Since the defendants raise the question of the validity of Order No. 4, and the proper administration of the amended Order No. 4 by the marketing administrator, I am of the opinion that the paragraphs referred to should be included in the report. The court therefore overrules the objection and confirms the master's report.

After the injunction was issued, and on application of the defendants, a supersedeas pendente lite was issued by the Senior Circuit Judge of this circuit, staying and superseding the operation of the temporary injunction insofar as it compelled payments by the defendants to the marketing administrator, and directing that payments should be made to the clerk of this court instead, or that a bond should be filed to guarantee such payments. Later, the supersedeas was amended to reinstate the injunction which had ordered payments of administration expenses under Article X of the order

to the Administrator. The net result of the action of this court and the supersedeas was to compel payment of administration expenses directly to the marketing administrator, and payments of the equalization charges under Article VIII, and the marketing service charges under Article IX, to the clerk of this court.

On appeal from the injunction, the Circuit Court ordered that the supersedeas ordered issued by the Senior Circuit Judge should be continued pending the final determination of the cases on their merits. H. P. Hood & Sons, Inc., et al. v. United States, et al., 97 F. (2d) 677.

There are now but eleven of the original thirty cases before me for decision. The rest of them are dependent on the decision in these-cases, except in one or two instances, where additional testimony is to be taken. This decision will treat the cases as one case, and variations in the facts or law as applicable to any of them will be treated at the end of this opinion.

As a basis for the denial of the relief sought the defendants urge three broad grounds: first, the unconstitutionality of the Agricultural Marketing Agreement Act of 1937, hereinafter referred to as the act; second, the invalidity of Order No. 4, both in its original form and as amended; and third, the improper and illegal administration of Order No. 4, as amended.

The constitutionality of the act was passed upon by this court in United States of America, et al., v. Whiting Milk Co., supra. The reasoning and decision in that case are adopted here. In addition to the grounds urged, the defendants now raise one other question—whether the act is unconstitutional because of the improper delegation of legislative power to the Secretary of Agriculture or to a group of private persons. The defendants contend that this court is bound by the decision of the Circuit Court of Appeals for this Circuit in Builer v. United States, 78 F. (2d) 1, wherein it held that the Agricultural Adjustment Act of 1933 was unconstitutional because the Congress improperly delegated legislative power to the executive department. They also contend that even if this court is not bound to follow the decision in the Butler case, under the doctrine of stare decisis, the Act shows a delegation of authority without set-

ing up proper standards as a guide for the exercise of that authority. The defendants' first contention is untenable. The decision of the Circuit Court of Appeals in the Butler case, supra, was a decision on the original Agricultural Adjustment Act. After the Supreme Court of the United States had affirmed the decision of the Cir it Court (without passing on the question of the delegation of legislative authority) the Act, including the delegation clause, was amended. As the 1937 Act now stands, the delegation clause is quite different from the one passed on by the Circuit Court in the Butler case. The doctrine stare decisis has no application here.

The Act contains the following declaration of policy:

"Sec. 2. It is hereby declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August, 1909, to July, 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August, 1909-July, 1914. In the case of tobacco and potatoes, the base period shall be the post war period, August, 1919-July, 1929.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this

title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section."

To effectuate the policy of the act, the Secretary of Agriculture is authorized under section 8c (4) to issue an order. Section 8c (5) specifies in detail the terms and conditions of any orders that may be issued, and provides that no other terms and conditions may be contained in such order. A close reading of 8c (5) leads to the conclusion that the power delegated by Congress to the Secretary has not only a definite standard to follow, but has limitations beyond which the Secretary may not go. The standard or criterion that is to govern the exercise of authority given to the Secretary is the levelling of prices for agricultural commodities between the current period and the base period prescribed in the act. It contains a definite and fixed standard to which the Secretary must adhere, and provides the precision of guidance which were pointed out as lacking in the National Industrial Recovery Act in Schechter Corp. v. U. S., 295 U. S. 495, and Panama Refining Co. v. Ryan, 293 U. S. 388. The exact point urged by these defendants was recently passed upon by the Fifth Circuit in Whittenburg, et al. v. U. S., 100 F. (2d) 520, wherein it was held that the act was not unconstitutional because of an unwarranted delegation of legislative power. To the same effect are Edwards v. U. S., 91 F. (2d) 767; Wallace v. Hudson-Duncan, 98 F. (2d) 985; and Currin, et al. v. Wallace, et al., decided by the Supreme Court of the United States January 30, 1939.

The defendants next contend that section 8c (12) of the act amounts to an unconstitutional delegation of legislative authority to a group of producers or to the officers of the cooperative associations having control of the producer vote. This section, and section 8c (19) which permits the Secretary to conduct a referendum for the purpose of determining the sentiment amongst the producers, does not transcend the power of Congress to submit the question of the approval of an order to the producers. Some method or means of ascertaining the sentiment of the producers had to be provided, and the method provided by section 8c (12) and 8c (19) is not arbi-

trary or capricious. The master's report contains no indication that if a different method of ascertaining the sentiment of the producers had been used any result other than approval of the amended Order No. 4 would have been obtained. The act is not unconstitutional because of any alleged improper delegation of legislative authority.

because of any alleged improper delegation of legislative authority. The defendants attack the constitutionality of the act on another ground. Assuming for the purpose of this attack that Congress has the power to fix a minimum price on milk in interstate commerce, they then urge, citing Thompson v. Consolidated Gas Co., 300 U. S. 55, that the equalization pool authorized by the act operates to deprive those defendants, who dispose of the bulk of their milk at fluid prices, of a portion of their profits, and transfer them to other handlers having less of the fluid market. They contend that it is a taking of their property and giving to another, a doctrine thoroughly inconsistent with the Thompson case. As I view the facts presented in the master's report, the defendants' contention is unsound. The effect of this law is not to take profits from one distributor and pay them to another. The real effect is that it takes from the handler the difference between the amount he paid the producers, (the blended price is only a minimum price) and the amount he should have paid the producer as ultimately determined by his sales. See Milk Control Board v. Crescent Creamery, 14 N. E. (2d) 588, 590. The facts presented in this case disclose a situation more closely akin to those presented in the New England Divisions Case, 261 U. S. 184, and the Dayton-Goose Creek Ry. v. U. S., 263 U. S. 456.

The New England Divisions Case held that an order of the

The New England Divisions Case held that an order of the Interstate Commerce Commission, which increased the New England share of a joint rate by 15 percent, was constitutional. Under the order the joint rates were not increased, so that the effect of awarding the New England railroads a 15 percent increase necessarily meant that the money constituting the increase must be taken from the roads operating west of the Hudson River. In that decision, the court recognized the adoption by Congress of a new policy and a new exercise of an old power vested in it. At page 189 of that decision, the court pointed out that the prior enactments of Congress had been concerned chiefly with the prevention of abuses in rates.

The new 1920 Act sought not only to correct abuses, but to insure adequate transportation service. The court, deciding the Order valid, held that, in its control of interstate commerce, the Congress was not limited to mere police duty amongst the railroads, but, to attain the new purpose could create new rights, new obligations, and new machinery. Again in the Dayton-Goose Creek case, in passing upon the "recapture" phase of the 1920 Transportation Act, the court denied that the power of Congress to regulate interstate commerce was exhausted by the fixing of reasonable rates and the prevention of those which are discriminatory. In rejecting the narrow construction of the commerce clause, Mr. Chief Justice Taft said: "To regulate in the sense intended is to foster, protect and control the commerce with appropriate regard to the welfare of those who are immediately concerned, as well as the public at large, and to promote its growth and insure its safety." Dayton-Goose Creek Ry. v. U. S., supra, 478.

It is in the interest of those concerned, as well as the public at large, that the marketing of milk flowing in interstate commerce should be regulated. Without regulation, it is simply a question of slow death to those handlers who buy at the blended price and are forced to sell great portions of their commodity at the Class II prices. In Nebbia v. New York, 291 U. S. 502, 517, the court said "A satisfactory stabilization of prices for fluid milk requires that the burden of surplus milk be shared equally by all producers and distributors in the milkshed. So long as the surplus burden is unequally distributed the pressure to market surplus milk in fluid form will be a serious disturbing factor." This is applicable here.

The regulation and control adopted by Congress eliminates the bad effect of the arbitrary classification of milk for sale either as Class I or Class II milk. The handlers who in the past have had the advantage of disposing of the bulk of their milk at Class I prices have no lien or property right in this preferred market. They cannot corner and hold it against the power of Congress to control the commerce and industry insofar as it affects interstate commerce. They must give way to that power. I rule that the act is not unconstitutional on this ground.

The defendants urge at great length that the original Order No. 4 and the amended Order No. 4 are both invalid. Whether or not Order No. 4, issued on February 7, 1936, is invalid, because of the failure to strictly comply with the provisions of the act for notice, hearings and findings, is not material, since the Marketing Agreement Act of 1937, which became effective on June 3, 1937, "expressly ratified, legalized and confirmed" all marketing agreements, licenses, orders, regulations, provisions and acts prior thereto. Amended Order No. 4 became effective after the passage of the 1937 act, and therefore must be examined more closely.

In promulgating amended Order No. 4, the Secretary did not make a specific finding and proclamation under section 8e of Act to the effect that the pre-war base period could not be satisfactorily determined from available statistics. The defendants contend that the failure of the Secretary to make such a specific finding and proclamation renders the amended Order invalid. They insist that, under section 8c (17) of the act, which states:

"The provisions . . . under section 8e applicable to orders shall be applicable to amendments to orders: . . ."

as a condition precedent to the validation of any amended order, it must contain a specific finding and proclamation as to the unavailability of the pre-war base period statistics. I think that the construction urged by the defendants is too narrow and technical. When the Secretary promulgated Amended Order No. 4, he ratified and affirmed the original "findings made upon the evidence introduced at the hearings on said, order".

Plainly, he intended to ratify every finding that had been made in promulgating his original order save only as they might conflict with the findings of the amended Order. (See paragraph 15 of the master's report.) A fair reading of the amended Order would warrant the conclusion that he affirmed and ratified his finding as to the unavailability of statistics for the pre-war period. This is sufficient compliance with Section 8e of the Act. I therefore rule that the amended Order is not invalid on this ground.

As further matters of defense, the defendants attack the adminis-

tration of the Order. The requests for rulings raise questions of twenty or more allegedly invalid acts of the administrator. Some of these are trivial. One of the more important allegations is that in his computations, the administrator has included milk sold to handlers by producers not having a certificate of registration issued by the Commonwealth of Massachusetts. The Order defines a producers as

"any person . . . who produces milk in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the Marketing Area."

The master has found that, as a practical matter, it was impossible from the records available to the administrator to apply the rigid test urged by these defendants. The test that the administrator applied was whether the country plant to which the milk was delivered by the producer was approved for the shipment of milk into the marketing area by one or more of the towns and cities in the area. I consider this to have been a practical and satisfactory compliance with the Order.

Other bases for alleged errors by the administrator are the erroneous inclusion of milk which should have been excluded, and the erroneous exclusion of milk which should have been included. In some instances, the administrator has, as the master found, erroneously included or excluded milk from his computations: But, the Act anticipates that the marketing administrator would not be infallible, and authorizes the promulgation of Article VII, Section 2 and Section 3 of the Order, which provides for the establishment of a cash reserve fund to be utilized for the correction of errors. The errors detected by the administrator, or called to his attention, have been corrected insofar as the reports before him have enabled him to do so. (See paragraphs 184 and 185 of the master's report.)

The other alleged errors, if proven to be such, may be corrected in the recomputation which is referred to later herein. They do not go to the merits of the validity of the Act or to the Order, and are not so serious in their nature as to warrant denial of the plaintiffs' claim for relief.

In passing upon a like attack upon a similar statute in Milk Control Board v. Crescent Creamery, supra, referring to the details of operation of an equalization pool, the court said, at page 590: "They are complicated, and involve adjustments to equalize differences between the tentative or announced 'blended price' and the afterward determined 'blended price'. Delinquencies in payments of assessments to the pool also affect the 'blended price', but there are compensating. adjustments when the delinquencies are paid." As in that case, I am satisfied that the method and means adopted by the administrator to effect the legislative intent do so with a sufficient degree of exactness to satisfy the constitutional requirements. Obviously, in effectuating the policy and purpose of the act much of the detail work must be left to the person charged with the administration. It would be impossible for either the Congress or the Secretary of Agriculture to prescribe rules and regulations that would encompass every situation that can possibly be encountered by the administrator. He has shown wholesome and wholehearted willingness to effectuate the intent of Congress without losing sight of or sacrificing any rights that these defendants might have under the Constitution or any law.

If this decision is ultimately sustained, a recomputation of the blended price for every period subsequent to August 1, 1937, will be necessary. Inasmuch as the ultimate blended price of any computation will be dependent upon the amount of Class II milk included in the computation, (see paragraph 189 of the master's report) it will be necessary, before such recomputation is made, that the milk administrator receive reports from all who are bound to comply with the provisions of the Order. After such reports have been received from all handlers a new blended price should be determined, using the same class prices that were used in making the original computation for each period, and using the same method of computation.

There has been a widespread violation of the Act and Order; and only a comparative few of the handlers have made the payments provided by the Act. These defendants have paid into court over \$2,500,000. The condition of the industry under the circumstances is so chaotic that this court should do everything possible to obtain

a decision by an appellate court on the real questions involved without unnecessary delay. The constitutionality of the Act, the validity of the Order, and the decision on the question of a mandatory injunction to compel compliance with it, are the vital questions to be finally settled. Ordinarily an equity decree should be an all inclusive decision of the questions that have been raised so that the relief granted will be precise, definite, and comprehensive. In this case it would call for a complete adjudication of the exact amounts owed by each defendant. To allow the final decision on the real questions to be delayed for the period of time that would be necessary to make the recomputation, either administratively or through the court, and to subject the parties to the incidental expense, would operate to the disadvantage of every person concerned in the case, and possibly to the general public.

I anticipate that if this decision is affirmed in the appellate court the case will be returned to this court for disposition of the question of the recomputation. In the event, however, that it is ruled that the Act is unconstitutional or the order is invalid, the matter is then ended without need for it.

The plaintiffs are entitled to the injunctions prayed for in the third and fourth paragraphs of their bill, with the understanding on the part of the court that a recomputation is to be made for every period commencing with August 1, 1937, as soon as practicable after a final decision by the appellate courts on the questions above decided.

A somewhat troublesome situation is presented in the status of the two cents per hundredweight "marketing service fee" deducted under Article IX of the Order from the blended price due the producers and paid into court. This charge is for a service to be currently performed by the administrator for the benefit of producers. The master has found that it is now impossible for the administrator to provide the current service for the periods for which he has not received the charge. (See paragraph 117 of the master's report.) Under the supersedeas of the Circuit Court the "marketing service fee" was ordered to be paid into the hands of the clerk of this court. Obviously, the administrator has been powerless to provide the des-

ignated service to the producers. Under the circumstances, it would seem equitable to redistribute that "marketing service fee" to the producers from whom it was withheld by the handlers and paid into court. When and if an appellate court determines that the "marketing service fee" is a proper charge, and should be paid to the marketing administrator, he will then be in a position a render the service and the charge should be exacted. The funds that are paid in the meantime, constituting this service charge, should be turned over to the marketing administrator for distribution to the producers from whom the money has been withheld.

The defendants' joint requests for conclusions of law are denied, except insofar as they are consistent with the above. Request No. 19 has been waived.

INDIVIDUAL DEFENDANTS. Green Valley Creamery, Inc.

In addition to all of the contentions considered above, this defendant asserts that it is not engaged in interstate commerce as that term is defined in the act and is not subject to the regulation provided in the Order. This contention is untenable. While it is quite true that the Green Valley Creamery, Inc., sells its milk to the Stuart Milk Company in Vermont, nevertheless, the facts described by the master in paragraphs 300 to 308 clearly show that the transaction is a questionable one or a "wash" sale: The same Howard B. Parker dominates both corporations, determines the price that the Stuart Milk Company will pay for the milk, and determines what price the Green Valley Creamery, Inc., will receive for the milk. Assuming for the purpose of the defendant's contention, however, that the sale is a bona fide sale, it cannot be urged by the defendant that at the time of the sale by the Green Valley Creamery, Inc., to the Stuart Milk Company that the Green Valley Creamery, Inc., did not have definite knowledge that the commodity being sold was to be sold for transportation in the current of interstate commerce. The contention of the defendant is overruled. See Shreveport case, 234 U. S. 342, and Currin, et al. v. Wallace, et al., decided by the Supreme Court of the United States on January 30, 1939. The defendant's request for a contrary conclusion of law is denied.

A. J. Robinson.

The master has found that the defendant is a handler of milk as defined in the Order, and receives milk from producers at its plant at Starksboro, Vermont. All of the milk purchased by the defendant from the producer is subsequently distributed and sold in the marketing area. There is no question that the milk which the defendant handles is later a part of the flow of interstate commerce, and if the defendant contends that the transaction in which he engages is purely an intrastate transaction, it still directly burdens and affects the flow of interstate commerce, and is therefore subject to regulation by the Congress. See Green Valley Creamery, Inc., supra, and cases there cited. The defendant's requests A and B are denied.

A. J. McNeil & Sons.

The master has found that this defendant is a handler as defined in the Order. It purchases milk, however, not from producers, but from handlers. (See paragraph 314 of the master's report.) This milk is sold and distributed in the marketing area. While the defendant makes no purchases from producers, and is therefore not subject to payment of the blended price, it, nevertheless, is engaged in an activity over which the Congress may validly exercise its authority. It is therefore subject to compliance with the Act and Order so far as it is applicable. The defendant's request to the effect that the defendant is not indebted to the marketing administrator is allowed on the facts disclosed in the master's report. It is, however, subject to the injunctive relief sought by the plaintiffs.

The Whiting Milk Company.

Although the Whiting Milk Company is one of the largest handlers of milk in the area, it raises the intrastate character of certain of its activities as a reason for denying relief to the plaintiffs, at least insofar as these intrastate activities are concerned. Paragraphs, 256 and 257 of the master's report disclose that this defendant purchases milk from producers in Massachusetts for distribution wholly in Massachusetts, and that the processing of the milk occurs separate and apart from the processing of other milk purchased from outside

of the state. It is delivered to designated institutions in the Commonwealth of Massachusetts. The surplus not needed for the institutional sale, thereafter becomes commingled with other out of state milk. The defendant contends that this milk wholly raised, processed, and sold within the State of Massachusetts is not subject to regulation by the Congress. The master has found (paragraph 97) that the introduction of as little as 2000 extra quarts of milk into the marketing area might affect the price of milk within the area. There was evidence before him that as little as a carload of milk would drop the wholesale price in Boston as much as 1 cent per day. Clearly, then, it cannot be denied that the milk wholly raised, processed, and sold in Massachusetts does not have a direct effect or burden on the marketing of interstate commerce milk. In Currin, et al. v. Wallace, et al., supra, the court stated: "The fact that intrastate and interstate transactions are commingled on the tobacco market does not frustrate or restrict the congressional power to protect and control what is committed to its own care." Citing the Shreveport case, supra, the court stated: "Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the State, that is entitled to prescribe the final and dominant rule." The receipt and handling of the milk by this defendant in the Commonwealth of Massachusetts directly affects interstate commerce, and is clearly and inextricably related with the interstate commerce in milk transactions carried on by the said defendant. It is readily seen that the regulation of interstate commerce in milk cannot be effected without the regulation of the milk in question.

The Intervenors.

One producer was allowed to intervene in the Hood action, and another in the Whiting action, on their assertion that they had a real and genuine interest in the proceedings before the court. Their principal claim of interest is that were it not for the Act and Order they would be receiving more money for their product than the blended price, and they point to certain plant notices that were posted by these two defendants after the institution of these suits.

The notices proclaimed that a price higher than the blended price would be paid to the producers if the defendants were not compelled to comply with the Act and Order. The intervenors allege that the operation of the Act and Order deprives them of this increase over the blended price and is violative of the Fifth Amendment to the Constitution. The short answer to these contentions is that the blended price is but a minimum that the handler must pay to the producer, and there is nothing in the Act or the Order that prohibits the defendants from paying the higher price to the intervenors. It is further to be noted that the plant notices do not constitute such a contract as would enable these intervenors to recover the higher price from the defendants, if the defendants abandoned this litigation. The most that the intervenors have is a contingent interest in the excess over the blended price dependent upon the uncontitutionality of the Act or the invalidity of the Order. Such interest blossoms into a right, if at all, only after the Act has been declared unconstitutional or the Order illegal. Plainly, neither the Act nor the Order constitute a taking of property without due process of law.

Requests for conclusions of law by the intervenors are denied, except insofar as they are consistent with the above.

After the money paid into court has been released to the marketing administrator, these intervenors will be entitled to receive from him a payment, to the extent of moneys deducted from the blended price due them, and paid into court for marketing service fees under Article IX, as amended.

A decree may be prepared in accordance with the above.

SUPPLEMENTAL OPINION. February 27, 1939.

SWEENEY, J. At the request of counsel for the plaintiffs, the following is added to the opinion which was published on February 23, 1939:

Statements of fact above are intended as findings of fact, and statements of legal conclusions, as rulings of law, in accordance

with Rule 52 of the Federal Rules of Civil Procedure, 28 USCA. following section 723c.

All of the material facts in the case are contained in the master's report. Insofar as I have dealt with questions of law, my statements in the opinion shall be regarded as conclusions of law for the purpose of the record.

CLERK'S CERTIFICATE AS TO PAYMENT OF MONEY BY H. P. HOOD & SONS, INC., INTO THE REGISTRY OF THE COURT.

DISTRICT COURT OF THE UNITED STATES,
District of Massachusetts.

I, James S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the ledger of this office shows that \$1,412,280.83 has been paid into court by H. P. Hood & Sons, Inc., as of February 10, 1939, in the cause in said District Court entitled,

No. 4519, Equity,

UNITED STATES OF AMERICA AND HENRY A. WALLACE, Secretary of Agriculture, Plaintiffs,

H. P. HOOD & SONS, Inc., et al., Defendants,

in said District Court determined.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Boston, in said District, this fourteenth day of March, A. D. 1939.

[SEAL]

JAMES S. ALLEN, Clerk.

CLERK'S CERTIFICATE AS TO PAYMENT OF MONEY BY NOBLE'S MILK COMPANY INTO THE REGISTRY OF THE COURT.

DISTRICT COURT OF THE UNITED STATES.

District of Massachusetts.

I, James S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the ledger of this office shows that \$152,190.34 has been paid into court by Noble's

Milk Company as of February 10, 1939, in the cause in said District Court entitled,

No. 4519, Equity,

UNITED STATES OF AMERICA AND HENRY A. WALLACE, Secretary of Agriculture, Plaintiffs,

H. P. HOOD & SONS, Inc., et al., Defendants,

in said District Court determined.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Boston, in said District, this fourteenth day of March, A. D. 1939.

[SEAL]

JAMES S. ALLEN, Clerk.

DEFENDANTS NOTICE OF APPEAL. [Filed March 9, 1939.]

Notice is hereby given that H. P. Hood & Sons, Inc., and Noble's Milk Company, defendants above named, hereby appeal to the Circuit Court of Appeals for the First Circuit from the order and decree of this court entered in the above entitled cause on March 9, 1939.

CHARLES B. RUGG,
ROPES, GRAY, BOYDEN & PERKINS,

Solicitors for H. P. HOOD & SONS, INC., and NOBLE'S MILK COMPANY.

. Appeal bond waived.

J. C. WILSON,

Special Asst. to the Attorney General.

INTERVENOR'S NOTICE OF APPEAL. [Filed March 9, 1939.]

Notice is hereby given that E. Frank Branon, intervenor in the above-entitled cause, hereby appeals to the Circuit Court of Appeals

for the First Circuit from the order and decree of this court entered in the above-entitled cause on March 9, 1939.

EDWARD L. MERRILL, MERRILL & MERRILL,

Solicitors for E. FRANK BRANON.

Appeal bond waived.

I. C. WILSON.

Special Asst. to the Attorney General.

Also on the said ninth day of March, A. D. 1939, an application for supersedeas pending appeal is filed by H. P. Hood & Sons, Inc., and Noble's Milk Company and the following Order for Supersedeas is entered:

ORDER FOR SUPERSEDEAS. March 9, 1939.

In the above-entitled cause it is ordered, adjudged and decreed that a supersedeas shall be and hereby is allowed staying and superseding the operation of the final decree entered on March 9, 1939 .. pending the final decision on the appeal therefrom in so far as it commands and directs and otherwise requires the defendants-appellants H. P. Hood & Sons, Inc. and Noble's Milk Company to pay to the market administrator appointed under Order No. 4 as amended all amounts now due and owing and hereafter to become due and owing under the provisions of Order No. 4 as amended ' on July 27, 1937, excepting from this order of supersedeas all payments now due or to become due under Article X, Section 1, of the aforesaid amended order, and also staying and superseding the operation of said final decree in so far as it commands, directs and otherwise requires the clerk of this court to pay to the said market administrator the sums paid into the registry of this court by the defendants, H. P. Hood & Sons, Inc. and Noble's Milk Company, by reason of the bills rendered by the said market administrator and also staying and superseding the operation of said final decree in so far as it directs and otherwise requires the market administrator to recompute the blended price for the several delivery periods from August 1, 1937 to and including January

15, 1939, all upon condition that the amounts now due and those becoming due from time to time from the said defendants under the provisions of Order No. 4 as amended on July 28, 1937 shall be paid into the registry of the District Court to be held pending the final determination of the above-entitled case on appeal and subject to the further order of this court.

GEORGE C: SWEENEY,

United States District Judge.

ORDER, TO TRANSMIT ORIGINAL PAPERS AND AS TO PRINTING. March 10, 1939.

This cause came on to be heard upon motion of the defendants for an order under rule 75 (i) of this court and rule 36, paragraph 9, of the United States Circuit Court of Appeals for the First Circuit to cause to be transmitted and returned certain organial papers in said cause, and thereupon, the plaintiffs assenting thereto and upon consideration thereof, it is ordered:

- 1. That the original papers mentioned in said motion, to wit:
 - (a) Appendices A and B to the report of the special master,
- (b) The exhibits appended to the report of the special master and numbered Exhibit 11-11 l, inclusive, 12-12 e, inclusive, and Exhibit No. 19,

be safely kept and transmitted by the clerk of this court to the clerk of the United States Circuit Court of Appeals for the First Circuit to be safely kept by said clerk for the use of said Circuit Court of Appeals in consideration of said cause on appeal and thereafter to be returned by him to the clerk of this court.

2. That is shall be unnecessary for the appellants to print as part of the printed record on appeal any of the appendices and exhibits specified in paragraph 1 hereof.

Entered as the order of this court on the

day of March, 1939.

JAMES S. ALLEN, Clerk.

Enter. 3/10/39.

GEORGE C. SWEENEY,

District Judge

STIPULATION WITH RESPECT TO THE MARKETING AGREEMENT. [Filed February 24, 1937.]

Whereas the plaintiff Secretary of Agriculture and the defendants H. P. Hood & Sons, Inc., and Noble's Milk Company and certain other handlers have this date simultaneously with the execution hereof entered into a marketing agreement relating to the handling of milk in the so-called Greater Boston Marketing Area; and

Whereas said marketing agreement and such order as the Secretary may issue in connection therewith become effective on the sixteenth day of January, 1939; and

Whereas on and after the effective date of said marketing agreement and said order in connection therewith the plaintiffs expect and desire compliance by the defendants with the terms of said marketing agreement rather than with the terms of Order No. 4 as heretofore amended; and

Whereas all parties desire to reserve all rights and claims which they are asserting in the present suit, and desire an adjudication by the court thereon; and furthermore to reserve all rights and claims which they may hereafter desire to assert in any other litigation to which any party hereto may be a party; and

Whereas the defendants have made payments of substantial sums into the registry of the court and to the market administrator in compliance with the order of this court as superseded by order of the Circuit Court of Appeals for the First Circuit, and all parties have expressly reserved the right to make claim thereto and therefor;

Now therefore it is hereby stipulated and agreed by and between the parties as follows:

1. The signing of said marketing agreement by the plaintiff Secretary of Agriculture and by the defendants H. P. Hood & Sons, Inc., and Noble's Milk Company or compliance with the terms thereof or with any order promulgated by the said Secretary in conjunction therewith or any act or acts done or taken pursuant thereto by any party shall not be deemed to be an admission or denial by any such party of the validity or invalidity of the Agricultural Marketing Agreement Act of 1937 or of Order No. 4 as heretofore, now

or hereafter amended or of any other order hereafter promulgated under said Act or of the legality or illegality of any act or acts of the said Secretary or of the Federal Market administrator or of the defendants heretofore or hereafter done or taken pursuant thereto or as a result thereof, or be deemed an admission or denial of any fact or facts or points of law now or hereafter raised or asserted in this or any other suit to which any party hereto may be a party whether or not relating to the validity of the said Act or Order or of any other order promulgated under said Act or to any action, administrative or otherwise, now or hereafter taken pursuant thereto.

2. The signing of said marketing agreement by the defendants or by the plaintiff Secretary of Agriculture or compliance with the terms thereof or with any order promulgated by the said Secretary in conjunction therewith or any act or acts now or hereafter done or taken pursuant thereto by any party shall not be construed or held in any manner whatever to constitute a waiver of or estoppel to assert any or all of their respective rights in this or any other suit to which any party hereto may be a party, but shall be without prejudice to any party.

3. All parties hereby severally reserve their respective rights to assert in this suit or in any other litigation or proceedings to which any party hereto may be a party the validity or invalidity of the Agricultural Marketing Agreement Act of 1937, of Order No. 4 as heretofore, now or hereafter amended, of any other Order hereafter promulgated under said Act and of the administration thereof.

4. All parties severally reserve all their respective rights, if any, in and to the funds now on deposit or hereafter deposited in the registry of this court in connection with this suit.

5. The defendant reserves the right to collect from whomever may be liable therefor any amounts that have been or may be paid by it under Order No. 4 as heretofore amended.

6. The rights, duties and obligations assumed under the terms of

the said marketing agreement are in no wise affected by this stipula-

HUGH B. COX, J. C. WILSON, THURMAN ARNOLD,

Counsel for Plaintiffs.

CHARLES B. RUGG,
ROPES, GRAY, BOYDEN & PERKINS,

Counsel for Defendant

STATEMENT OF ERRORS BY H. P. HOOD & SONS, INC., AND NOBLE'S MILK COMPANY.

[Filed March 13, 1939.]

Come now H. P. Hood & Sons, Inc. and Noble's Milk Company, defendants-appellants in the above-entitled cause and file the following statement of the points upon which they will rely in the prosecution of their appeal to the United States Circuit Court of Appeals for the First Circuit, taken from the judgment and decree of the District Court of the United States for the District of Massachusetts entered on the ninth day of March, 1939 in the above-entitled case.

- 1. The court erred in entering a decree permanently enjoining the defendants H. P. Hood & Sons, Inc. and Noble's Milk Company from violating, and commanding and directing the said defendants to comply with, the provisions of Order No. 4 as amended by the amendments issued on July 28, 1937.
- 2. The court erred in entering a decree directing the clerk of the District Court to pay to the market administrator for the Greater Boston Marketing Area the monies deposited in the registry of the District Court in compliance with the interlocutory decree entered in this cause on November 30, 1937, as modified and superseded by the decree and order of the Circuit Court of Appeals for the First Circuit entered on June 24, 1938 (97 F. (2d) 677).
- 3. The court erred in ruling that the Agricultural Marketing Agreement Act of 1937 establishes sufficient standards to guide the Secretary of Agriculture in the exercise of the powers delegated to him and does not unconstitutionally delegate to the Secretary of

Agriculture the legislative power conferred upon the Congress in Article I, Section 1 and Section 8 of the Constitution.

- 4. The court erred in ruling that the Agricultural Marketing Agreement Act of 1937 was a valid exercise of the power to regulate interstate commerce.
- 5. The court erred in ruling that the Agricultural Marketing Agreement Act of 1937 as applied by Order No. 4 as amended does not deprive the defendants of their property without due process of law and without just compensation in violation of the Fifth Amendment.
- 6. The court erred in ruling that Sections 8c (5) (A), 8c (5) (B) (ii) and 8c (5) (C) of the Agricultural Marketing Agreement Act of 1937, as applied by Article IV, Article VII and Article VIII, Section 1, paragraph 3 of Order No. 4 as amended, are a valid exercise of the power to regulate interstate commerce and do not deprive the defendants of their property without due process of law and without just compensation in violation of the Fifth Amendment.
- 7. That the court erred in ruling that the amendments of July 28, 1937 to Order No. 4, for the purposes of which the Secretary of Agriculture used the post-war instead of the pre-war base period, were validly issued although the Secretary did not make in connection with their issuance the express finding and proclamation which is required by Sections 8c (17) and 8e of the Act.
- 8. The court erred in ruling that the amendments of July 27, 1937 to Order No. 4 must be considered as validly issued in accordance with the Agricultural Marketing Ageement Act of 1937 although the determination of the Secretary of Agriculture required by Section 8(c)9 of the Act,—that the proposed amendments were approved by more than two-thirds of the producers producing milk or its products for the sale in the marketing area—was based solely upon a referendum conducted contrary to Sections 8c (9), 8c (12) and 8c (19) of the Act in the following respects:
 - (a) a large number of producers who delivered their milk to stations shipping only cream to the Marketing Area in the

representative period designated by the Secretary of Agriculture were not permitted to vote in said referendum whereas the votes of other producers who delivered their milk to stations shipping only cream into the marketing area in such period were counted in said referendum.

(b) votes of producers who delivered their milk to plants shipping less than 50 percent of their total milk receipts to the marketing area in said representative period were counted,

(c) the votes of all the members of New England Dairies, Inc. and of New England Milk Producers Association were counted in favor of said amendments solely on the basis of a ballot cast by the board of directors of each such organization,

(d) the votes of a substantial number of farmers who did not have certificates of registration issued pursuant to chapter 94, Sections 16A-16C of the General Laws of Massachusetts were counted.

9. The court erred in ruling that Order No. 4 as amended on July 27, 1937 contains no other terms than those authorized by the Agricultural Marketing Agreement Act of 1937 and in failing to rule that the provisions of Articles IV, V, VII and VIII of the said order are terms forbidden by said Act to be included in orders, in so far as they permit and require the market administrator to include in the equalization pool milk "received" but not "purchased" from their members by cooperative associations of producers qualified under the Capper-Volstead Act.

10. The court erred in ruling that the market administrator acted in accordance with the terms of Order No: 4 as amended in including, in the computation of the blended price, milk delivered by farmers to a country plant approved by one or more of the towns in the marketing area for shipment of milk into the Area irrespective of, whether such farmers had certificates of registration issued pursuant to Sections 16A-16C of Chapter 94 of the General Laws of Massachusetts.

Wherefore the said defendants, H. P. Hood & Sons, Inc. and Noble's Milk Company, pray that the decree in said cause may be

reversed, and for such other and further relief as may be just in the premises.

CHARLES P. RUGG,
ROPES, GRAY, BOYDEN & PERKINS,

Solicitors for H. P. HOOD & SONS,

INC. and NOBLE'S MILK COMPANY.

STATEMENT OF ERRORS BY E. FRANK BRANON, INTERVENOR. [Filed March 13, 1939.]

Comes, now E. Frank Branon, intervenor in the above-entitled cause, and files the following statement of the points upon which he will rely in the prosecution of his appeal to the United States Circuit Court of Appeals for the First Circuit, taken from the judgment and decree of the District Court of the United States for the District of Massachusetts entered on the ninth day of March; 1939 in the above-entitled case.

- 1. The court erred in entering a decree denying the prayer for relief contained in the intervenor's answer.
- 2. The court erred in entering a decree permanently enjoining the defendants H. P. Hood & Sons, Inc. and Noble's Milk Company from violating and commanding and directing the said defendants to comply with, the provisions of Order No. 4 as amended by the amendments issued on July 28, 1937.
- 3. The court erred in entering a decree directing the clerk of the District Court to pay to the market administrator for the Greater Boston Marketing Area the monies deposited in the registry of the District Court in compliance with the interlocutory decree entered in this cause on November 30, 1937, as modified and superseded by the decree and order of the Circuit Court of Appeals for the First Circuit, entered on June 24, 1938 (97 F.-(2d) 677).
- 4. The court erred in ruling that the operation of the Agricultural Marketing Agreement Act of 1937 and Order No. 4, as amended, does not decrease the price which the intervenor receives for milk sold to the defendant, H. P. Hood & Sons, Inc.
- 5. The court erred in failing to rule that the Agricultural Marketing Agreement Act of 1937 as applied in Amended Order No. 4,

operates to take the property of the intervenor in violation of the Fifth Amendment by diminishing the market value of the milk produced by said intervenor.

- 6. The court erred in ruling that Sections 8c (5) (A), 8c (5) (B) (ii) and 8c (5) (C) of the Agricultural Marketing Agreement Act of 1937, as applied by Article IV, Article VII and Article VIII, Section 1, paragraph 3 of Order No. 4 as amended are a valid exercise of the power to regulate interstate commerce and do not deprive the intervenor of his property without due process of law and without just compensation in violation of the Fifth Amendment.
- 7. The court erred in ruling that the market administrator acted in accordance with the terms of Order No. 4 as amended in including, in the computation of the blended price, milk delivered by farmers to a country plant approved by one or more of the towns in the marketing area for shipment of milk into the area irrespective of whether such farmers had certificates of registration issued pursuant to Sections 16A-16C of Chapter 94 of the General Laws of Massachusetts.

The intervenor will also rely upon each and all the errors stated by the defendants, H. P. Hood & Sons, Inc., and Noble's Milk Company.

Wherefore the said intervenor, E. Frank Branon, prays that the decree in said cause may be reversed, and for such other and further relief as may be just in the premises.

EDWARD L. MERRILL, MERRILL & MERRILL,

Solocitors for E. FRANK BRANNON, Intervenor.

STIPULATION AS TO THE CONTENTS OF THE RECORD ON APPEAL.

[Filed March 10, 1939.]

It is hereby stipulated by and between the parties to the aboveentitled cause, by their respective attorneys:

1. That the transcript of the record on appeal hereof shall consist of the following papers:

First amended bill of complaint (omitting Exhibit, A).

Recital of hearing on the prayer for a preliminary injunction. Petition of E. Frank Branon for leave to intervene, October 29, 1937.

Recital of order allowing intervention by E. Frank Branon.

Answer of H. P. Hood & Sons, Inc.

Answer of Noble's Milk Company.

Decree for temporary injunction.

Order for supersedeas as to H. P. Hood & Sons, Inc. by Bingham, J.

Order for supersedeas as to Noble's Milk Company by Bingham, J.

Order referring the cases to a special master.

Report of the special master (see paragraph 2 below).

Answer of the intervenor, E. Frank Branch.

Recital of supersedeas denied by District Judge.

Memorandum of the filing of the special master's report (together with a reference to the fact that it is printed in Volumes II and III of the Record on Appeal).

Recital of the hearing on the master's report (together with a statement that no additional evidence was offered).

Plaintiffs' proposed conclusions of law.

Defendants' requested conclusions of law (omitting the discussion under each numbered request).

Requests for conclusions of law by E. Frank Branon, January 28, 1939.

Defendants' "Waiver" on certain issues filed on March 9, 1939.

Recital of order joining Samuel W. Tator, market administrator, as a plaintiff, March 9, 1939.

Final decree.

Memorandum of District Court, re preliminary injunction November 19, 1937.

Supplementary findings of fact by District Court, November 24, 1937.

Opinion and order of the Circuit Court of Appeals Continuing the superseadeas issued by Bingham, J., June 24, 1938.

Opinion of the District Court, February 23, 1939. Supplemental opinion, February 27, 1939.

Certificates of the clerk of the District Court showing the amount of the payments in the registry in compliance with the temporary injunction and orders for supersedeas.

Defendants' notice of appeal.

Intervenor's notice of appeal.

Order for supersedeas, March 9, 1939.

Order as to the transmission of certain original papers and documents and as to printing.

Stipulation filed in the District Court with respect to the marketing agreement effective January 16, 1939.

Assignments of error of defendant and of intervenor.

Clerk's certificate.

Stipulation of the contents of the record on appeal.

- 2. That in printing the record on appeal the papers listed in paragraph 1 hereof, with the exception of the report of the special master, shall be printed as Volume I of said record on appeal.
- 3. That the copies of the printed report of the special master, which have already been printed by the parties to the above-entitled cause, bound with appropriate covers shall constitute Volumes II and III of the printed record on appeal, except so as the District Court has ordered that certain appendices and exhibits attached to said Report need not be included in the printed record on appeal but shall be transmitted to the United States Circuit Court of Appeals for the First Circuit as original exhibits.

H. B. COX, J. C. WILSON,

Counsel for the Plaintiffs,

CHARLES P. RUGG,
ROPES, GRAY, BOYDEN & PERKINS,

Counsel for the Defendants.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,

DISTRICT OF MASSACHUSETTS, SS.

I, james S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the three volumes, entitled as follows:

Volume I., Pleadings;
Volume II., Report of Special Master
(Findings of Facts)
Volume III., Report of Special Master
(Exhibits Appended)

constitute the transcript of the record on the appeals of the defendants, including true copies of such proofs, entries and papers on file as have been designated by the stipulation of parties as to the contents of the record on appeal, in the cause entitled

No. 4519, EQUITY DOCKET,

UNITED STATES OF AMERICA AND HENRY A. WALLACE,
SECRETARY OF AGRICULTURE, PLAINTIFFS,

H. P. HOOD & SONS, INC., ET AL., DEFENDANTS,

in said District Court determined.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, at Boston, in said District, this twenty-first day of March, A. D. 1939.

[SEAL]

JAMES S. ALLEN, Clerk.

CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the three volumes, entitled as follows:

Volume I., Pleadings;

Volume II., Report of Special Master (Findings of Fact); Volume III., Report of Special Master (Exhibits Appended)

this certificate being attached to each of said three volumes, contain and are a true copy of the record and all proceedings to, and including, March 22, 1939, in the cause in said court numbered and entitled, No. 3445.

H. P. HOOD & SONS, INC., ET AL., DEFENDANTS, APPELLANTS,

UNITED STATES OF AMERICA ET AL., PLAINTIFFS, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twenty-second day of March, A. D. 1939.

[SEAL]

ARTHUR I. CHARRON, Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1938

No. 772

ORDER ALLOWING CERTIORARI—Filed March 27, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted, and the case is assigned for argument immediately following No. 771.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1938

No. 865

ORDER ALLOWING CERTIORARI-Filed April 17, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted, and the case is consolidated with No. 772 for the purpose of argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



ERK SCOPY

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 772

H. P. HOOD & SONS, INC., AND NOBLE'S MILK COMPANY, PETITIONERS.

vs.

THE UNITED STATES OF AMERICA, AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE

PETITION FOR CERTIORARI FILED MARCH 24, 1939. CERTIORARI GRANTED MARCH 27, 1939.

No. 865

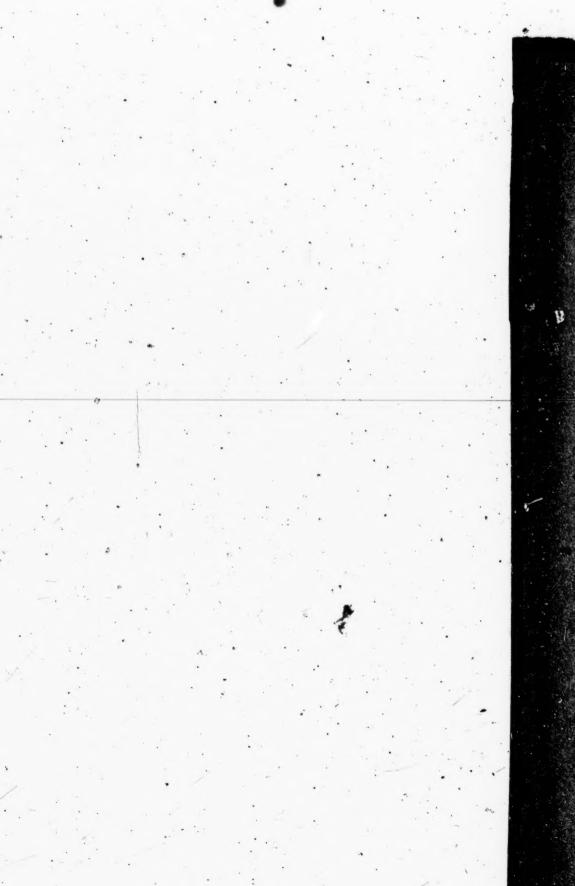
E. FRANK BRANON, PETITIONER.

vs.

THE UNITED STATES OF AMERICA AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE

PETITION FOR CERTIORARI FILED APRIL 12, 1939. CERTIORARI GRANTED APRIL 17, 1939.

ON WITTS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT



UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3445.

H. P. HOOD & SONS, Inc., ET AL.,

DEFENDANTS, APPELLANTS,

v

UNITED STATES OF AMERICA ET AL.,

PLAINTIFFS, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS,
FROM FINAL DECREE (SWEENEY, J.), MARCH 9, 1939.

TRANSCRIPT OF RECORD.

VOLUME II.

REPORT OF SPECIAL MASTER.
(FINDINGS OF FACTS.)

CHARLES B. RUGG, ROPES, GRAY, BOYDEN & PERKINS, EDWARD L. MERRILL, MERRILL & MERRILL.

for Appeliants.

HUGH B. COX, JAMES C. WILSON,

SPECIAL ASSISTANTS TO THE ATTORNEY GENERAL,

for Appellees.



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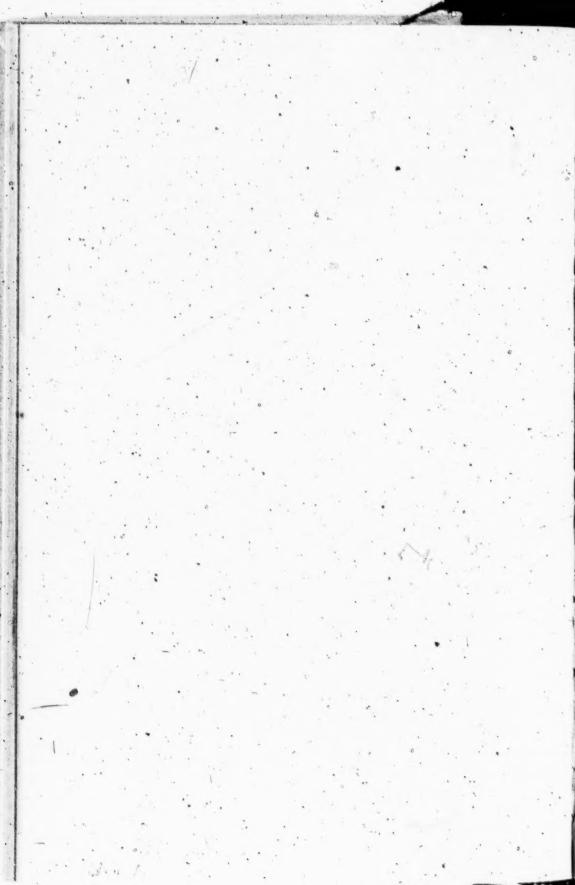
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In the District Court of the United States for the District of Massachusetts

No. 4519

UNITED STATES ET AL.

H. P. HOOD & SONS, INC., AND NOBLE'S MILK COMPANY

No. 4520

SAME v. THE WHITING MILK COMPANY

No. 4521

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SAME v. GREEN VALLEY CREAMERY, INC.

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SAME v. F. W. LAROE AND JOHN E. BURR

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No. 4540

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No. 4543

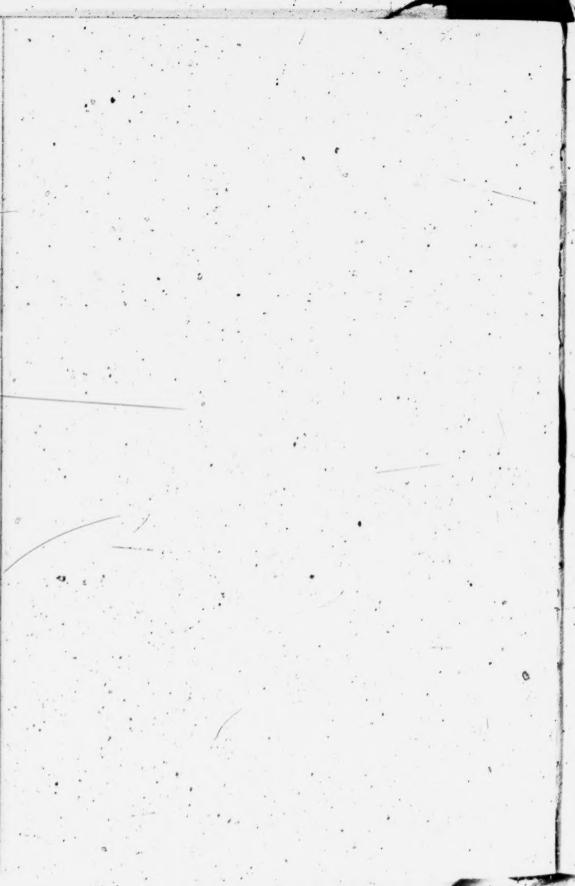
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MASTÉR'S REPORT

These are thirty suits in equity, which were brought under the provisions of Section 8a (6) of the Agricultural Marketing Agreement Act of 1937 (Act of May 12, 1933, 48 Stat. 31; 7 U.S.C.A. Section 608a (6), as amended August 24, 1935, 49 Stat. 672, and as reenacted and amended June 3, 1937, Chapter 296, 50 Stat. 246). These suits seek to compel compliance by the various defendants with an order of the Secretary of Agriculture issued February 7, 1936 as amended by an order of the Secretary issued July 28, 1937 relating to the marketing of milk in the city of Boston and in various cities and towns in its vicinity. The defendants are dealers in or handlers of milk in the area described in the Secretary's order as the "Greater Boston Marketing Area." as hereinafter defined.

Whenever the words "Greater Boston, Massachusetts, Marketing Area as defined by Order No. 4" or "as defined by Order No. 4 as amended" or "Greater Boston Marketing Area as defined by Order No. 4" or "as defined by Order No. 4 as amended" or "Marketing Area as defined by Order No. 4" or "as defined by Order No. 4 as amended" or "as defined in the order" are used in these findings, they shall be taken to designate the territory included within the boundary lines of the cities and towns of Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham, Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Winchester, Winthrop, and Woburn, Massachusetts.

The provisions of the Order as amended are described in greater detail below, but in general they require all handlers in the area to pay for their milk at certain prices set up by the Order, which vary according to the use made of the milk by the handler, and provide for "equalization" of all such sums so as to effect the payment to all producers who

supplied the area of a uniform price for their milk. The Order as amended provided that it should become effective

August 1, 1937.

The cases were referred to me as Special Master by order of the District Court dated December 23, 1937 wherein I was directed to hear the parties and their evidence and to make and report to the Court my findings of fact. Hearings were held according to the order beginning on January 4 and concluding on April 28, 1938. Over 4200 pages of testimony were taken and 474 exhibits, some of them over 600 pages long, were offered in evidence. I hereby make the following report of my findings.

PART ONE

THE PROMULGATION AND AMENDMENT OF ORDER No. 4

I. The Promulgation of Order No. 4

1. On November 30, 1935, the Secretary of Agriculture gave notice of a public hearing on a proposed marketing agreement and a proposed order regulating the handling of milk in the marketing area. A copy of the notice follows:

Where's, under the Agricultural Adjustment Act, as amended, notice of hearing is required in connection with a proposed marketing agreement or a proposed order, and the General Regulations, Series A, No. 1, of the Agricultural Adjustment Administration provide for such notice; and

Whereas, representatives of certain producers have filed written applications requesting the Secretary to call a hearing on a proposed marketing agreement for the consideration of the producers and the handlers of milk in the Greater Boston Marketing Area, said agreement to be executed pursuant to section 8b of the act, as amended

Now, Therefore, pursuant to the said act and said general regulations, notice is hereby given of a hearing to be held on a proposed marketing agreement and a

proposed order, regulating the handling of milk in the Greater Boston Marketing Area, in the State Armory on Main St., St. Johnsbury, Vermont, on December 10, 1935, and at the Gardner Auditorium, State House, Boston, Massachusetts, on December 12, 1935, at 9:30 a.m. and thereafter until concluded.

This public hearing is for the purpose of receiving evidence as to the general economic conditions which may necessitate regulation in order to effectuate the declared policy of the act and as to the specific provisions which a marketing agreement and order should contain.

The proposed marketing agreement and order provide for the regulation of the handling of milk in the Greater Boston Marketing Area, as defined in said agreement and order, and, among other things, provision is made for: (a) appointment of a market administrator, (b) classification of milk, (c) minimum price schedule, (d) equalization of the cost of milk among producers, (e) establishing of the base rating of producers, (f) deductions for administrative expenses and marketing service charges, (g) assurance of payment to producers, and (h) reports of handlers.

Copies of the proposed marketing agreement and proposed order may be inspected in or procured from the office of the Hearing Clerk, Room 4725, South Building, United States Department of Agriculture, Washington, D. C.

It is hereby declared that an emergency exists in the handling of milk in the aforesaid area, which requires a shorter period of notice than fifteen (15) days; and it is hereby determined that the period of notice given is reasonable under the circumstances.

/s/ H. A. WALLACE Secretary...

Dated: November 30, 1935. Washington, D. C. 2. Public hearings were held on December 10 and 11, 1935, at St. Johnsbury, Vermont, and on December 12, 1935, at Boston, Massachusetts. At the hearings interested parties were afforded an opportunity to introduce evidence and to be heard on the proposed marketing agreement and the proposed order. All of the testimony received at the said hearings was reduced to writing. A certified copy of the testimony and exhibits received at the said hearings and certain documents forwarded to the Secretary by interested parties after the close of the said hearings was introduced in evidence before me as constituting the material before the Secretary at the time of the promulgation of Order No. 4 and is attached to this report as Appendix A and made a part hereof.

3. On January 18, 1936, the Secretary of Agriculture tentatively approved a marketing agreement and thereafter handlers of more than 50% of the volume of milk covered by Order No. 4 (as hereinafter defined) failed to sign the

tentatively approved marketing agreement:

4. On January 25, 1936, the Secretary of Agriculture made and issued the following finding and proclamation:

PROCLAMATION MADE BY THE SECRETARY OF AGRICULTURE CONCERNING THE BASE PERIOD TO BE USED IN CONNECTION WITH THE EXECUTION OF A MARKETING AGREEMENT AND THE ISSUANCE OF AN ORDER REGULATING THE HANDLING OF MILK IN THE GREATER BOSTON, MASSACHUSETTS, MARKETING AREA.

United States Department of Agriculture, Office of the Secretary.

By virtue of the authority vested in the Secretary of Agriculture by the Agricultural Adjustment Act, approved May 12, 1933, as amended, the Secretary of Agriculture does hereby find and proclaim that in connection with the execution of a marketing agreement and the issuance of an order regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area, the purchasing power of such milk during the

base period August 1909 to July 1914 cannot be satisfactorily determined from available statistics in the Department of Agriculture, but that the purchasing power of such milk can be satisfactorily determined from available statistics in the Department of Agriculture for the period August 1919 to July 1929; and the period August 1919 to July 1929 is hereby found and proclaimed to be the base period to be used in connection with ascertaining the purchasing power of milk handled in the Greater Boston, Massachusetts, Marketing Area, for the purpose of the execution of a marketing agreement and the issuance of an order regulating the handling of said milk in that area.

IN TESTIMONY WHEREOF, the Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington, District of Columbia, this 25th day of January, 1936.

/s/ H. A. WALLACE Secretary of Agriculture.

5. On February 5, 1936, the Secretary of Agriculture made and issued the following determination which was approved by the President of the United States on February 6, 1936, as shown below:

DETERMINATION OF THE SECRETARY OF AGRICULTURE WITH RESPECT TO A PROPOSED ORDER REGULATING THE WANDLING OF MILK IN THE GREATER BOSTON, MASSACHUSETTS, MARKETING AREA.

Whereas, the Secretary of Agriculture, pursuant to Sections 8b and 8c of Title 1 of the Agricultural Adjustment Act, approved May 12, 1933, as amended, hereinafter called the Act, having reason to believe that the issuance of a marketing agreement and order with respect to the handling of milk in the Greater Boston, Massachusetts, Marketing Area would tend to effectuate the declared policy to establish and maintain

such marketing conditions in the handling of milk in the aforesaid area as would reestablish prices of milk to producers of milk in said area at a level that would give such milk a purchasing power with respect to articles that such producers buy equivalent to the purchasing power of milk in the base period, August 1919-July 1929, gave, on the 30th day of November, 1935, notice of a hearing, which was held on the tenth and eleventh days of December, 1935, at St. Johnsbury, Vermont, and on the twelfth day of December, 1935, at Boston, Massachusetts, on a proposed marketing agreement and a proposed order regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area, at which times and places all interested parties were afforded an opportunity to be heard on the proposed marketing agreement and the proposed order; and

Whereas after such hearing and after the tentative approval by the Secretary of a marketing agreement on the 18th day of January, 1936, handlers of more than fifty per centum of the volume of milk, covered by such proposed order, which is produced or marketed within the Greater Boston, Massachusetts, Marketing Area, refused or failed to sign such marketing agreement relating to milk;

Now Therefore, the Secretary of Agriculture, by virtue of the authority vested in him by the act, does hereby determine:

1. That the refusal or failure of said handlers to sign the said marketing agreement tends to prevent the effectuation of the declared policy to establish and maintain such marketing conditions in the handling of milk in the aforesaid area as will reestablish prices of milk to producers of milk in said area at a level that will give such milk a purchasing power with respect to articles that such producers buy equivalent to the purchasing power of such milk in the base period, August 1919—July 1929; and

- 2. That the issuance of the proposed order is the only practical means, pursuant to such policy, of advancing the interests of producers of milk in said area; and
- 3. That the issuance of the proposed order is approved or favored by over seventy-five (75) per centum of the producers who, during the month of November, 1935, said month being here and now determined by the Secretary to be a representative period, have been engaged in the production of milk for sale in the said area.

In Witness Whereof, I, H. A. Wallace, Secretary of Agriculture, have executed this determination and have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this 5th day of February 1936.

H. A. WALLACE Secretary of Agriculture

Approved:

Franklin D. Roosevelt
President of the United States

Dated: February 6, 1936.

6. On February 7, 1936, R. G. Tugwell, Acting Secretary of Agriculture, made certain findings and set forth the said findings in an order regulating the handling of milk in the marketing area which the said R. G. Tugwell, Acting Secretary of Agriculture, promulgated on the same date. (The said order being hereinafter referred to as "Order No. 4.") The said findings and order were in the following form:

UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL ADJUSTMENT ADMINISTRATION

Order Series-Order No. 4

ORDER REGULATING THE HANDLING OF MILK IN THE
GREATER BOSTON, MASSACHUSETTS,
MARKETING AREA

Issued by the Secretary of Agriculture February 7, 1926 Effective 12:01 a.m., E. S. T., February 9, 1936

Whereas, by Section 8b of Title I of the Agricultural Adjustment Act, approved May 12, 1933, as amended, hereinafter called the act, the Secretary of Agriculture is empowered, after due notice and opportunit; for hearing, to enter into marketing agreements with processors, producers, associations of producers and others engaged in such handling of any agricultural commodity or product thereof as is in the current of interstate or foreign commerce, or which directly burdens, obstructs or affects interstate or foreign commerce in such commodity or product thereof; and

Whereas, by Section 8c (1) of the act the Secretary of Agriculture is empowered to issue orders applicable to processors, association of producers and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of section 8c, such orders to regulate only such handling of such agricultural commodity or product thereof as is in the current of interstate or foreign commerce, or which directly burdens, obstructs or affects interstate or foreign commerce in such commodity or product thereof; and

Whereas, the Secretary of Agriculture, having reason to believe that the issuance of a marketing agreement and order with respect to the handling of milk in the Greater Boston, Massachusetts, Marketing Area would tend to effectuate the declared policy to establish and maintain such marketing conditions in the handling

of milk in the aforesaid area as would reestablish prices of milk to producers of milk in said area at a level that would give such milk a purchasing power with respect to articles that such producers buy equivalent to the purchasing power of milk in the base period, August 1919-July 1929, gave, on the 30th day of November 1935, notice of a hearing, which was held on the tenth and eleventh days of December 1935 at St. Johnsbury, Vermont and on the twelfth day of December 1935 at Boston, Massachusetts, on a proposed marketing agreement and a proposed order regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area, at which times and places all interested parties were afforded an opportunity to be heard on the proposed marketing agreement and the proposed order; and

Whereas, after such hearing and after the tentative approval by the Secretary of a marketing agreement on the 18th day of January 1936, handlers of more than 50 per centum of the volume of milk, covered by this order, which is marketed within the Greater Boston, Massachusetts, Marketing Area, refused or failed to sign such marketing agreement relating to milk; and

Whereas, the Secretary determined, on the 5th day of February 1936, said determination being approved by the President of the United States on the 6th day of February 1936, that said refusal or failure tends to prevent the effectuation of the declared policy to establish and maintain such marketing conditions in the handling of milk in the aforesaid area as would reestablish prices of milk to producers of milk in said area at a level that would give such milk a purchasing power with respect to articles that such producers buy equivalent to the purchasing power of such milk in the base period, August 1919—July 1929, and that the issuance of this order is the only practical means, pursuant to such policy, of advancing the interests of producers of milk in said area and is approved or favored by over seventy-

five per cent of the producers who, during the month of November 1935, said month being determined by the Secretary to be a representative period, have been engaged in the production of milk for the sale in the Greater Boston, Massachusetts, Marketing Area; and

Whereas, on the 25th day of January 1936, the Secretary found and proclaimed that the purchasing power of milk handled in the Greater Boston, Massachusetts, Marketing Area could not be satisfactorily determined from available statistics of the United States Department of Agriculture during the base period August 1909 to July 1914, but that the purchasing power of said milk could be satisfactorily determined from available statistics of the Department of Agriculture during the period August 1919—July 1929, and, on the same date, found and proclaimed the period August 1919—July 1929 to be the base period to be used in connection with ascertaining the purchasing power of milk handled in the Greater Boston, Massachusetts, Marketing Area; and

Whereas, the Secretary finds, upon the evidence introduced at the aforementioned hearings:

1. That in 1934, 90.8 per cent of the total volume of milk sold in the Greater Boston, Massachusetts, Marketing Area, originated in states other than Massachusetts and entered into the current of interstate commerce; that the milk originating in the State of Massachusetts is inextricably intermingled with that milk which is in the current of interstate commerce, and in such a manner that it is impossible to regulate that milk originating in states other than Massachusetts without regulating that milk which originates in the State of Massachusetts and which enters the current of interstate commerce; and that the handling of milk in the Greater Boston, Massachusetts, Marketing Area is in the current of interstate commerce, or directly burdens, obstructs or affects interstate commerce.

2. That the classification of milk into two classes follows a custom of long-standing in the market and is an economically justifiable method of classifying milk;

That the prices received by producers for milk sold in the marketing area were, for a long time prior to said hearings, at a level that gave such milk a purchasing power with respect to articles that producers buy considerably below the purchasing power in the base period; that the prices established in this order will, over a period of time, tend to give such milk a purchasing power with respect to articles that producers buy equivalent to the purchasing power of such milk in the base period; that the establishment of such prices does not have for its purpose the maintenance of prices to producers above the level which is declared in the act to be the policy of Congress to establish; that the differential in prices to associations of producers, and producers, is justified as a reasonable allowance for services actually performed by associations of producers; that the differential in price between milk delivered from producers' farms to handlers'. plants located not more than forty miles from the State House in Boston and to plants located more than forty miles from the State House in Boston is a reasonable allowance for the extra handling costs incurred by handlers operating country station plants; and that the method provided for determining the class II price is a method which bears a reasonable relationship to the price of cream in the above market;

4. That the determination of uniform prices to producers and the payment of such prices through a market-wide equalization pool founded upon a base-rating plan is a fair and reasonable method of distributing to producers the proceeds of sales to handlers; that the country station, transportation, butter fat and other differentials are proper differentials to be used in calculating such prices; that the payment of class I prices for the bases of producers whose farms are within forty

miles of Boston is a proper recognition of the economic position of such producers, due to the greater availability of their milk for class I use; and that the method of calculating the bases of all producers is a fair and reasonable method;

5. That the Greater Boston, Massachusetts, Marketing Area, as defined in the order, is the natural marketing area, within which Boston handlers distribute the

aforesaid milk;

6. That the market administrator is a proper agency to administer the order and that the powers granted to, and duties specified for, such market administrator in the order are necessary for the administration of the terms and provisions of the order;

7. That the deduction of a sum not exceeding 2¢ perhundredweight is a proper deduction as each handler's proper rata share of the expenses of the administration

hereof: .

8. That the expenses which the market administrator will necessarily incur during the twelve-month period immediately following the effective date of this order, for the maintenance and functioning of such market administrator, will be approximately \$135,000;

9. That the reports required of handlers by this order are reasonably necessary for the proper adminis-

tration of the order;

10. That the deduction of 5¢ per hundredweight from payments made to producers, except those producers for whom a duly qualified association is actually performing services, is a proper deduction for such services rendered by the market administrator for market information to such producer, and for verification of weights, sampling and testing of milk;

11. That the furnishing of security by handlers to the market administrator for payments to be made by each handler is necessary in order to insure the payment to producers of the minimum prices specified in

this order;

12. That the order regulates the handling of milk in the same manner as, and is applicable only to handlers specified in the marketing agreement mentioned above, upon which hearings have been held;

13. That all the remaining provisions of this order are necessary to effectuate the other provisions of the

order; and

14. That the issuance of this order and all of the terms and conditions hereof will tend to effectuate the declared policy to establish and maintain such marketing conditions in the handling of milk in the aforesaid area as will reestablish prices of milk to producers of milk in said area at a level that will give such milk a purchasing power with respect to articles that such producers buy equivalent to the purchasing power of milk in the base period, August 1919—July 1929;

Now, THEREFORE, the Secretary of Agriculture, pursuant to the authority vested in him by the act, hereby orders that such handling of milk in the Greater Boston, Massachusetts, Marketing Area as is in the current of interstate or foreign commerce, or which directly burdens, obstructs or affects interstate or foreign commerce shall, from the effective date hereof, be in conformity to; and in compliance with, the following terms and conditions:

ARTICLE I-DEFINITIONS

SECTION 1. Terms.—The following terms shall have the following meanings:

1. "Act" means the Agricultural Adjustment Act approved May 12, 1933, as amended.

2. "Secretary" means the S cretary of Agriculture

of the United States.

3. "Greater Boston, Massachusetts, Marketing Area", hereinafter called the "Marketing Area", means the territory included within the boundary lines of the cities and towns of Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea,

Dedham, Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quiney, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown Wellesley, Weymouth, Winchester, Winthrop and Woburn, Massachusetts.

4: "Person" means an individual, partnership, corporation, association and any other business unit.

5. "Producer" means any person, irrespective of whether any such person is also a handler, who produces milk in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the Marketing Area.

6. "Handler" means any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating, who engages in such handling of milk, which is sold as milk or cream in the Marketing Area, as is in the current of interstate or foreign commerce or which directly burdens, obstructs or affects interstate or foreign commerce in milk and its products.

7. "Market Administrator" means the person designated pursuant to article II as the agency for the

administration hereof.

8. "Delivery period" means the current marketing period from the first to, and including, the fifteenth day of each month, and from the sixteenth to, and including, the last day of each month.

9. "Base," means the quantity of milk calculated for each producer pursuant to section 4 of article VII.

ARTICLE II-MARKET ADMINISTRATOR

Section 1. Selection, Removal and Bond.—The Market Administrator shall be selected by the Secretary and shall be subject to removal by him at any time. The Market Administrator shall, within forty-five (45) days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned

upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

Sec. 2. Compensation.—The Market Administrator shall be entitled to such reasonable compensation as may be determined by the Secretary.

Sec. 3. Powers.—The Market Administrator shall have power:

1. To administer the terms and provisions hereof;

2. To receive, investigate and report to the Secretary complaints of violations of the terms and provisions hereof.

Sec. 4. Duties.—The Market Administrator, in addition to the duties hereinafter described, shall:

1. Keep such books and records as will clearly reflect the transactions provided for herein:

2. Submit his books and records to examination by the Secretary at any and all times;

3. Furnish such information and such verified reports as the Secretary may request:

4. Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the Market Administrator:

5. Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within fifteen days after the date upon which he is required to perform such acts, has not (a) furnished security pursuant to article XI, (b) made reports pursuant to article V or (c) made payments pursuant to article VIII;

6. Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms are rovisions hereof; and

7. Pay, out of the funds provided by article X, (a) the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the Market Administrator, (b) his own compensation and (c) all other expenses which will necessarily be incurred by him for

the maintenance and functioning of his office and the performance of his duties.

Sec. 5. Responsibility.—The Market Administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler, or to any other person, for errors in judgment, for mistakes or for other acts either of commission or omission, except for his own willful misfeasance, malfeasance or dishonesty.

ARTICLE III-CLASSIFICATION OF MILK

Section 1. Sales and Use Classification.—Milk purchased or handled by handlers shall be classified as follows:

- 1. All milk sold or distributed as milk, chocolate milk or flavored milk and all milk not specifically accounted for as Class II milk shall be Class I milk; and
- 2. Milk specifically accounted for (a) as being sold, distributed or disposed of other than as milk, chocolate milk or flavored milk and (b) as actual plant shrinkage within reasonable limits shall be Class II milk.
- SEC. 2. Inter-Handler Sales:—Milk, including skim milk, sold by a handler to another handler shall be presumed to be Class I milk; provided, that, if such selling handler, on or before the date fixed for filing reports pursuant to article V, shall furnish proof satisfactory to the Market Administrator that such milk, or part thereof, has been sold or used by the purchasing handler other than as Class I milk, then and in that event, such milk, or part thereof, shall be classified as Class II milk.
- SEC. 3. Delivery of Class I Milk.—The milk which was sold or distributed by each handler as Class I milk shall be presumed to have been that milk which was delivered to such handler at plants within and nearest to the Marketing Area; provided, that, if such handler can show that such presumption will result in an unreasonable allocation as to Class I milk actually delivered to him outside the Marketing Area, the Market

Service.

Administrator may determine and make public a different basis of allocation than would otherwise be allowed by this section.

ARTICLE IV-MINIMUM PRICES

Section 1. Class I Prices to Associations of Producers.—Each handler shall pay any association of producers for Class I milk containing 3.7 percent butterfat, subject to the butterfat differential set forth in section 3 of article VIII, not less than the following prices:

1. \$3.42 per hundredweight for such milk delivered from the plant of such association to such handler's plant located not more than forty (40) miles from the

State House in Boston; and

2. \$3.37 per hundredweight for such milk delivered from the plant of such association to such handler at a railroad delivery point not more than forty (40) miles from the State House in Boston.

SEC. 2. Class I Prices to Producers.—Each handler shall pay producers, in the manner set forth in article VIII, for Class I milk delivered by them, not less than the following articles.

the following prices:

1 \$3.30 per hundredweight for such milk delivered from producers' farms to such handler's plant located not more than forty (40) miles from the State House in Boston;

2. \$3.09 per hundredweight for such milk delivered from producers' farms to such handler's plant located more than forty (40) miles from the State House in Boston, less an amount per hundredweight equal to the freight from the railroad shipping point for such handler's plant to such handler's railroad delivery point in the Marketing Area. Such freight shall be calculated according to applicable rail tariffs for the transportation in carload lots of milk in forty-quart cans and each such can shall be considered to contain 85 pounds of milk.

SEC. 3. Class II Prices.—Each handler shall pay producers, in the manner set forth in article VIII, for Class II milk not less than the following prices per hundred-

weight:

1. In the case of such milk delivered to a handler's plant located not more than forty (40) miles from the State House in Boston, a price which the Market Administrator shall calculate as follows: Divide by 33 the weighted average price per 40-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, multiply the result by 3.7, add 10 cents and subtract 23 cents; and

2. In the case of such milk celivered to a handler's plant located more than forty (40) miles from the State House in Boston, the price calculated by the Market Administrator, pursuant to paragraph 1 of this section,

minus six (6) cents.

SEC. 4. Sales Outside the Marketing Area.—The price to be paid by each handler to associations of producers or to producers, in the manner set forth in article VIII, for milk utilized as Class I milk outside the Marketing Area, shall be the price applicable pursuant to sections. 1 and 2 of this article adjusted by (a) the difference between such applicable price and the price ascertained by the Market Administrator as the prevailing price paid by processors for milk of equivalent use in the market where such Class I milk is utilized and (b) the difference between the freight allowance, if any, set forth in paragraph 2 of section 2 of this article and an amount equal to the carload freight rate approved by the Interstate Commerce Commission for movement of milk in 40-quart cans from the shipping point for the plant where such Class I milk is received from producers to the railroad delivery point serving the market where such Class I milk is sold; provided, that (1) if the market where such Class I milk is utilized is less than ten (10) miles from the plant-where such Class I milk is received from producers, the railroad shipping point for such plant shall be presumed to be the railroad delivery point serving such market, and (2) if the market where such Class I milk is utilized is located in Barnstable, Plymouth, Norfolk, Dukes and Nantucket counties, Massachusetts, such handler's railroad delivery point in the Marketing Area shall be considered to be the railroad delivery point serving such market.

SEC. 5. Publication of Class II Price.—On or before the fifth day after the end of each delivery period, the Market Administrator shall publicly announce the Class II price in effect for such delivery period.

ARTICLE V-REPORTS OF HANDLERS

Section 1. Periodic Reports.—On or before the eighth day after the end of each delivery period, each handler shall, except as set forth in section 1 of article VI, with respect to milk or cream which was, during such delivery period, (a) received from producers, (b) received from handlers or (c) produced by such handler, report to the Market Administrator, in the detail and form prescribed by the Market Administrator, as follows:

- 1. The receipts at each plant from producers who are not handlers and the total quantity of such receipts which represents milk delivered by producers in excess of their individual bases;
- 2. The receipts at each plant from any other handler, including any handler who is also a producer;
- 3. The quantify, if any, produced by such handler; and
- 4. The respective quantities of milk which were sold, distributed or used, including sales to other handlers, for the purpose of/classification pursuant to article III.
- Sec. 2. Reports as to Producers.—Each handler shall report to the Market Administrator:

1. Within ten (10) days after the Market Administrator's request with respect to any producer for whom such information is not in the files of the Market Administrator, and with respect to a period or periods of time designated by the Market Administrator, (a) the name and address, (b) the total pounds of milk delivered, (c) the average butterfat test of milk delivered and (d) the number of days upon which deliveries were made; and

2. As soon as possible after first receiving milk from any producer: (a) the name and address of such producer, (b) the date upon which such milk was first received, (c) the plant at which such producer delivered milk and (d) the plant, if known, at which such producer delivered milk immediately prior to the beginning

of delivery to such handler.

SEC. 3. Reports of Payments to Producers.—Each handler shall submit to the Market Administrator within thirty (30) days after the end of each delivery period his producer payroll for such delivery period which shall show for each producer: (a) the total delivery of milk with the average butterfat test thereof, (b) the portion of such delivery which was in excess of the base of such producer and (c) the net amount of such producer's payment, with the prices, deductions and charges involved.

SEC. 4. Outside Cream Purchases.—Each handler shall report, as requested by the Market Administrator, his purchases, if any, of bottling quality cream from handlers who receive no milk from producers, showing the quantity and the source of each such purchase and

the cost thereof at Boston.

SEC. 5. Verification of Reports.—In order that the Market Administrator may submit verified reports to the Secretary pursuant to paragraph 3 of section 4 of article II, each handler shall permit the Market Administrator or his agent, during the usual hours of business, to (a) verify the information contained in reports sub-

mitted in accordance with this article and (b) weigh, sample and test milk for butterfat.

ARTICLE VI-HANDLERS WHO ARE ALSO PRODUCERS

Section 1. Application of Provisions.—No provision hereof shall apply to a handler who is also a producer and who purchases no milk from producers or an association of producers, except that such handler shall make reports to the Market Administrator at such time and in such manner as the Market Administrator may request.

SEC. 2. Milk Purchased from Producers.—In the case of a handler who is also a producer and who purchases milk from producers or an association of producers, the Market Administrator shall, in the computations set forth in article VII, first exclude the milk purchased by such handler in each class from other handlers and then apportion the milk purchased by him from producers or an association of producers to each class according to the ratio which his remaining total sales in each class bear to his remaining total sales in all classes.

ARTICLE VII—DETERMINATION OF UNIFORM PRICES TO PRODUCERS

Section 1. Computation of Value of Milk for Each Handler.—For each delivery period the Market Administrator shall compute, subject to the provisions of article VI, the value of milk sold or used by each handler, which was not purchased from other handlers, by (a) multiplying the quantity of such milk in each class by the price applicable pursuant to sections 2, 3 and 4 of article IV and (b) adding together the resulting value of each class.

SEC. 2. Computation and Announcement of Uniform Prices.—The Market Administrator shall compute and announce the uniform prices per hundredweight of milk delivered during each delivery period in the following manner:

1. Combine into one total the respective values of milk, computed pursuant to section 1 of this article, for each handler who made the report as required by section 1 of article V for such delivery period and who made the payments required by article VIII for milk received during the delivery period next preceding but one;

2. Add the total net amount of the differentials ap-

plicable pursuant to section 4 of article VIII;

3. Subtract the total amount to be paid to producers pursuant to paragraphs 2, 3, and 4 of section 1-of article VIII:

4. Divide by the total quantity of milk which is included in these computations and which is not in excess of the total of the respective bases of producers whose farms are located more than forty (40) miles from the State House in Boston;

5. Subtract not less than four cents (4¢) nor more than five cents (5¢) for the purpose of retaining a cash balance in connection with the payments set forth in paragraph 5 of section 1 of article VIII;

6. Add an amount which will distribute, pursuant to section 3 of this article, any cash balance available; and

7. On or before the 12th day after the end of each delivery period mail to all handlers and publicly announce (a) such of these computations as do not disclose information confidential pursuant to section 8d of the Act, (b) the blended price per hundredweight which is the result of these computations and (c) the Class II price.

Sec. 3. Distribution of Cash Balance.—For each delivery period, the Market Administrator shall distribute, by an appropriate addition pursuant to section 2 of this article, the cash balance, if any, in his hands arising out of payments from handlers (to meet obligations arising out of paragraph 5 of section 1 of article VIII) during the delivery period next preceding but one.

Sec. 4. Base Rating.—The base of each producer shall be a quantity of milk for each delivery period calculated in the following manner: Multiply the figure determined pursuant to the applicable paragraph of section 5 or section 6 of this article by the number of days on which such producer delivered milk during such delivery period.

Sec. 5. Bases through March 31, 1937.—For calculating, pursuant to section 4 of this article, bases to be in effect up to and including March 31, 1937, the Market Administrator shall determine with respect to milk, or the milk equivalent of cream, delivered in bulk to proces-

sors from the farm operated by such producer:

1. In the case of each producer for whom the necessary information is submitted to the Market Administrator with respect to, and from whose farm some milk. or cream was delivered in bulle to processors in, each month of one or more of the calendar years 1933, 1934 and the year ending September 30, 1935, that figure which is highest of the following six (6) calculations, or such of these six (6) caldulations as are possible from available information: the average delivery per day during the quarter in which the average delivery per day was lowest of the four quarters, respectively, in the calendar year 1933, the calendar year 1934 and the year ending September 30, 1935; or 75 percent of the average delivery per day, respectively, during the calendar year 1933, the calendar year 1934 and the year ending September 30, 1935.

2. In the case of each producer for whom complete information with respect to none of the calendar years 1933, 1934, or the year ending September 30, 1935, is submitted to the Market Administrator, or from whose farm, according to such information, no milk or cream was delivered in bulk to processors in one or more months in each of the calendar years 1933, 1934, and the year ending September 30, 1935, until a satisfactory record of deliveries of milk in twelve consecutive months

subsequent to October 1934 becomes available to the Market Administrator, that figure which is 75 percent of the average delivery per day during the consecutive months subsequent to October 1934 and immediately prior to the date hereof, for which a record of milk deliveries is available to the Market Administrator; and, when a satisfactory record of deliveries of milk for twelve consecutive months following October 1934 becomes available to the Market Administrator, that figure which is higher of the two following calculations: 75 percent of the average delivery per day throughout such twelve consecutive months, and the average delivery per day during the three consecutive months of such twelve months in which the average delivery per day was lowest.

3. In the case of each producer who did not regularly sell milk for a period of thirty (30) days prior to the effective date hereof to a handler or to persons within the Marketing Area, that figure which is equal to the same percentage of his average delivery per day during the period when he receives the Class II price pursuant to paragraph 4 of section 1 of article VIII as, is the relationship between (a) the total deliveries of all producers not in excess of their respective bases during such period and (b) the total deliveries of all producers.

4. In the case of a producer who, as a tenant or landlord, moves his entire herd from one farm to another farm: the higher of the two figures from which have been calculated, pursuant to section 4 of this article, respectively, (a) the base in effect for the farm from which the herd is moved and (b) the base in effect for the farm to which the herd is moved.

Sec. 6. Bases after March 31, 1937.—In calculating, pursuant to section 4 of this article, bases to be in effect after March 31, 1937, the Market Administrator shall determine with respect to milk delivered in bulk to handlers from the farm operated by such producer:

1. In the case of bases which are to be in effect during the period from April 1, 1937 to March 31, 1938, that figure which is the higher of (a) the average delivery per day during the three months of the calendar year 1936 in which deliveries of milk were lowest and (b) sixty (60) percent of the average delivery per day throughout the calendar year 1936; and

2. In the case of bases which are to be in effect for the year beginning April 1, 1938, and for each year thereafter beginning April 1, that figure which is the higher of (a) the average delivery per day during the three months of the next preceding calendar year in which deliveries were lowest and (b) forty (40) percent of the average delivery per day throughout such calendar year.

Sec. 7. Recommendations.—Prior to January 1, 1937, the Market Administrator shall recommend to the Secretary amendments to this article which will provide for an equitable method of base rating with respect to those producers for whom, due to fortuitous circumstances or otherwise, the provisions of section 6 of this article would result in bases inequitable as compared with the bases of other producers.

ARTICLE VIII-PAYMENTS FOR MILE.

Section 1. Time and Method of Payment.—On or before the 25th day after the end of each delivery period, each handler shall make payments, subject to the butterfat differential set forth in section 3 of this article, for the total value of milk received during such delivery period as required to be computed pursuant to section 1 of article VII, as follows:

1. To producers, except as set forth in paragraph 2 of this section, at the blended price per hundredweight computed pursuant to section 2 of article VII, subject to the differentials set forth in paragraphs 1 and 2 of section 4 of this article, for that quantity of milk deliv-

ered by each producer not in excess of the base of such

producer;

2. To any producer, whose farm is located within forty (40) miles of the State House in Boston and who delivers milk to such handler at a plant located within forty (40) miles of the State House in Boston, at \$3.30 per hundredweight for that quantity of milk delivered by such producer not in excess of the base of such producer:

3. To producers, at the Class II price, subject to the differential set forth in paragraph 3 of section 4 of this article, for that quantity of milk delivered by each pro-

ducer in excess of his base;

4. To any producer, who did not regularly sell milk a period of thirty (30) days prior to the effective date hereof to a handler or to persons within the Marketing Area, at the Class II price, subject to the differential set forth in paragraph 3 of section 4 of this article, for all the milk delivered by such producer during the period beginning with the first regular delivery of such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month;

5. To producers, through the Market Administrator, by paying to or receiving from the Market Administrator, as the case may be, the amount by which the payments made pursuant to paragraphs 1, 2, 3, and 4 of this section are less than, or exceed, the value of milk as required to be computed for such handler pursuant to section 1 of article VII, as shown in a statement rendered by the Market Administrator on or before the

20th day after the end of such delivery period.

SEC. 2. Errors in Payments.—Errors in making any of the payments prescribed in this article shall be corrected not later than the date for making payments next following the determination of such errors.

Sec. 3. Butterfat Differential.—If any producer has delivered to any handler during any delivery period

nilk having an average butterfat content other than 3.7 percent, such handler shall, in making the payments prescribed by paragraphs 1, 2, 3, and 4 of section 1 of this article to such producer, add for each one-tenth of one percent of average butterfat content above 3.7 percent or deduct for each one-tenth of one percent of average butterfat content below 3.7 percent an amount per hundredweight which shall be calculated by the Market Administrator as follows: Divide by 33 the weighted average price per 40-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, subtract 8 cents and divide the result by 10.

Sec. 4. Country Station Differentials.—The payments to be made to producers by handlers pursuant to paragraphs 1, 3, and 4 of section 1 of this article shall be subject to differentials as follows:

1. With respect to that quantity of milk which is not excess of his base, delivered by a producer to a handler's plant located more than forty (40) miles from the State House in Boston, there shall be deducted an amount per hundredweight equal to the freight (considering 85 pounds of milk per can), according to the tariff currently approved by the Interstate Commerce Commission for the transportation, in carload lots of milk in 40-quart cans, to Boston-from the zone of location of the handler's plant.

2. With respect to the quantity of milk which is not in excess of his base, delivered by a producer, whose farm is located more than forty (40) miles from the State House in Boston, to a handler's plant located not more than forty (40) miles from the State House in Boston, there shall be added 21 cents per hundred-weight.

3. With respect to the quantity of milk delivered by a producer, which is in excess of his base, at the plant of a handler located more than forty (40) miles from

the State House in Boston, there shall be deducted six

(6) cents per hundredweight.

SEC. 5. Other Differentials.—In making the payments to producers set forth in paragraphs 1, 2, 3, and 4 of section 1 of this article, handlers may make deductions as follows:

1. With respect to all milk delivered by producers to the plant of a handler which is located more than forty (40) miles from the State House in Boston and which is located more than two (2) miles from a railroad shipping point, an amount not greater than 10 cents per hundredweight; provided, that such deduction has been approved and made public by the Market Administrator prior to the time of payment.

2. With respect to milk delivered by producers to a handler's plant which is located more than fourteen (14) miles, but not more than forty (40) miles, from the State House in Boston, an amount equal to 10 cents per hundredweight of Class I milk actually sold or distributed in the Marketing Area from such plant, such total amount to be deducted pro rata on all that milk not in excess of the respective bases of such producers.

ARTICLE IX-MARKETING SERVICES

Section 1. Deductions for Marketing Services.—Except as set forth in section 2, each handler shall deduct five (5) cents per hundredweight from the payments made direct to producers pursuant to article VIII with respect to all milk delivered to such handler during each delivery period by producers and shall pay such deductions to the Market Administrator on or before the 25th day after the end of such delivery period. Such monies shall be expended by the Market Administrator for market information to, and for verification of weights, sampling and testing of milk purchased from, said producers.

SEC. 2. Producers' Cooperative Association.—In the case of producers for whom a cooperative association,

which the Secretary determines to be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act", is actually performing, as determined by the Secretary, the services set forth in section 1 of this article, each handler shall make, in lieu of the deductions specified in section 1 of this article, such deductions from the payments to be made direct to such producers, pursuant to article VIII, as are authorized by such producers and, on or before the 25th day after the end of each delivery period, pay over such deductions to the association rendering such service.

ARTICLE X-EXPENSE OF ADMINISTRATION

Section 1. Payments by Handlers.—As his pro rata share of the expense of the administration hereof, each handler, except as set forth in section 1 of article VI, shall, on or before the 25th day after the end of each delivery period, pay to the Market Administrator a sum not exceeding two (2) cents per hundredweight with respect to all milk actually delivered to him during such delivery period by producers or produced by him, the exact sum to be determined by the Market Administrator subject to review by the Secretary; provided, that each handler, which is a cooperative association of producers, shall pay such pro rata share of expense of administration only on that milk actually received from producers at a plant of such association.

Sec. 2. Suits by Market Administrator.—The Market Administrator may maintain a suit in his own name against any handler for the collection of such handler's pro rata share of expense set forth in this article.

ARTICLE XI—ASSURANCE OF, AND SECURITY FOR, PAY-MENTS TO PRODUCERS

Section 1. Amount.—Each handler who purchases milk from producers or an association of producers shall, not less than ten (10) days before he is required

to make his first payments pursuant to article VIII, furnish to the Market Administrator security, in manner and form satisfactory to the Secretary, payable to the Market Administrator, as assurance of, and security for, payments to be made by such handler pursuant to article VIII, in such amount as will equal the value of the milk purchased by such handler during a period of time equivalent to a delivery period. In the event that the value of milk purchased by such handler for each of three consecutive delivery periods exceeds or is less than the amount of such security, such handler shall increase or decrease the security so that said security shall equal an amount not less than one-third of the total value of milk purchased during said three delivery periods.

SEC. 2. Bonds under State Statute—If, pursuant to a State statute, any handler has furnished the duly constituted authority charged with the duty of administering the applicable provisions of such statute, a bend or other security, a part or all of which is allocable to, and assures any part of, the payments to be made to producers, such handler shall furnish to the Market Administrator, in manner and form satisfactory to the Secretary, security in such amount as will, when added to such allocable and otherwise conditioned amount of security furnished pursuant to such State statute, equal the amount of security required under section 1.

SEC. 3. Payments to Producers.—In the event that a handler has failed to make payments, pursuant to article VIII, the Market Administrator shall, within fifteen (15) days after such failure, send by registered mail to each producer who, according to the records of the Market Administrator, has delivered milk to such handler within the period of time involved, and to each association of producers a form of the submittal of sworn proof of claim against such handler. Upon the receipt of such sworn proof of claim, the Market Administrator shall audit such claim and in addition cause to be

audited his claim, if any, as Market Administrator against such handler, and thereupon shall determine the total payments due from such handler.

Within fifteen (15) days after the determination of the amount of said payments, the Market Administrator shall make demand by registered letter upon such handler and upon his surety, if any, for the total payments. If at the expiration of fifteen (15) days from such notice, the handler, or his surety, has not satisfied such claim, the Market Administrator shall, by conversion, sale, suit, or otherwise, make available the amount realizable from the security furnished the Market Administrator, and make distribution to the claimant or claimants, including the Market Administrator, in accordance with proofs filed, either ratably or in full, as the case may be.

If the amount realized from the security is more than sufficient to pay all claims, the balance arising therefrom shall be returned to such handler or the surety entitled thereto as the case may be.

SEC. 4. Release.—In the event that a handler shall cease to buy milk from producers, or an association of producers, and shall furnish proof of such cessation to the Market Administrator, the Market Administrator shall, within thirty (30) days after receipt of such proof, return the security furnished pursuant to this article.

ARTICLE XII-RESPONSIBILITY

Section 1. Handlers.—The liability of the handlers hereunder is several and not joint and no handler shall be liable for the default of any other handler.

ARTICLE XIII—SEPARABILITY

Section 1. Separability.—If any provision of this Order is declared invalid or the applicability hereof to any person, circumstance or thing is held invalid, the validity of the remainder of this Order and the appli-

cability hereof to any other person, circumstance, or thing shall not be affected thereby.

ARTICLE XIV-DEROGATION

Section 1. Defogation.—Nothing contained in this Order is or shall be construed to be in derogation or modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the Act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

ARTICLE XV-AGENTS

SECTION 1. Agents.—The Secretary may, by a designation in writing, name any person (not a handler) including any officer or employee of the Government, or name any bureau or division in the Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this Order.

ARTICLE XVI—Effective Time, Termination and Suspension

- SECTION 1. Effective Time.—This Order, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated or suspended, pursuant to section 2 of this article.
- SEC. 2. Suspension and Termination.—This Order, any provision hereof or any amendment hereto, may be suspended or terminated by the Secretary, as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.
- SEC. 3. Effect.—Unless otherwise provided by the Secretary in the notice of amendment, termination or suspension, of any or all provisions hereof, the amendment, termination or suspension shall not: (a) affect, waive or terminate any right, duty, obligation or liabil-

ity which shall have arised or may thereafter arise in connection with any provision of this Order; (b) release or waive any violation of this Order occurring prior to the effective date of such amendment, termination or suspension; or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to any such violation.

SEC. 4. Continuing Power and Duty.—If, upon the termination or suspension of this Order, there are any obligations arising hereunder, the final accrual of ascertainment of which requires further acts by any handler, by the Market Administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such termination or suspension; provided, that any such acts required to be performed by the Market Administrator, shall, if the Secretary so directs, be performed by such other person, persons or agency as the Secretary may designate.

The Market Administrator, or such other person as the Secretary may designate, (a) shall continue in such capacity until discharged by the Secretary, (b) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the Market Administrator, or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property and claims vested in the Market Administrator or such person pursuant to this Order.

Sec. 5. Liquidation after Termination or Suspension.

—Upon the termination or suspension of this Order or of any provision hereof, the Market Administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the Market Administrator's office, and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are

unpaid and owing at the time of such termination or suspension. Any funds collected pursuant to the provisions of this Order over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the Market Administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

SEC. 6. Determination of Emergency—The Secretary hereby determines that an emergency exists which requires a shorter period of notice than three days, and that the period of notice, with respect to the issuance of this order, which is hereinafter provided, is reason-

able under the circumstances.

Now, THEREFORE, R. F. Tugwell, the Acting Secretary of Agriculture, acting under the provisions of the Agricultural Adjustment Act, as amended, for the purposes and within the limitations therein contained, and not otherwise, does hereby execute this Order in duplicate under his hand and the official seal of the Department of Agriculture, in the city of Washington, District of Columbia, on this seventh day of February, 1936, and, pursuant to the provisions hereof, declares this Order to be effective on and after 12:01 a. m., eastern standard time, February 9, 1936.

R. G. Tugwell Acting Secretary of Agriculture.

7. The said Order No. 4 provided that it should become effective at 12:01 a.m., eastern standard time, February 9, 1936, and was not amended, terminated, or suspended from the said date until August 1, 1936. On that date the Secretary of Agriculture issued the following order:

ORDER SUSPENDING ORDER NO. 4 REGULATING THE HANDLING OF MILK IN THE GREATER BOSTON, MASSACHUSETTS, MARKETING AREA

WHEREAS, Henry A. Wallace, Secretary of Agriculture of the United States of America, acting under the

provisions of the Agricultural Adjustment Act, as amended for the purposes and within the limitations therein contained, and pursuant to the applicable General Regulations issued thereunder, did, on the 7th day of February 1936, issue under his hand, and the official seal of the Department of Agriculture, an order for milk regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, effective the 9th day of February 1936; and

WHEREAS, the Secretary of Agriculture has determined to suspend the further operation of the said order:

Now, Therefore, the Secretary of Agriculture, acting under the authority vested in him as aforesaid, hereby suspends the further operation of the said Order No. 4, but any and all of the obligations which have arisen, or which may hereafter arise in connection therewith, by virtue of, or pursuant to the operation of the said order, to the effective date of this order of suspension, shall not be affected, waived, or terminated hereby.

IN WITNESS WHEREOF, H. A. Wallace, Secretary of Agriculture of the United States of America, has executed this order suspending the further operation of the aforesaid order in duplicate, and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington, District of Columbia, this 1st day of August 1936, and hereby declares that this order shall be effective on and after 12:01 a.m. e.s.t., August 1, 1936.

/s/ H. A. Wallace (Secretary of Agriculture)

8. On June 19, 1937, the Secretary of Agriculture gave notice of a public hearing on a proposed marketing agreement and a proposed order regulating the handling of milk in the marketing area. A copy of the notice follows:

Notice of Hearing with Respect to a Proposed Marketing Agreement and a Proposed Order Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area

Whereas, under Public Act No. 10, 73d Congress, as amended, and as reenacted by the Agricultural Marketing Agreement Act of 1937, notice of hearing is required in connection with a proposed marketing agreement or a proposed order, and the General Regulations, Series A, No. 1, as amended, of the Agricultural Adjustment Administration, United States Department of Agriculture, provide for such notice; and

Whereas, the Secretary of Agriculture has reason to believe that the execution of a marketing agreement and the issuance of an order will tend to effectuate the declared policy of said act with respect to the handling of milk in the Greater Boston, Massachusetts, marketing

area;

contain.

Now, Therefore, pursuant to the said act and said general regulations, notice is hereby given of a hearing to be held on a proposed marketing agreement and a proposed order regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, in the Armory, St. Johnsbury, Vermont, on June 29, 1937, at 9:30 a.m. eastern standard time; the Senate Chamber, State House, Augusta, Maine, on June 30, 1937, at 9:30 a.m., eastern standard time; and the Gardner Auditorium, State House, Boston, Massachusetts, on July 1, 1937, at 9:30 a.m., daylight saving time.

This public hearing is for the purpose of receiving evidence as to the general economic conditions which may necessitate regulation in order to effectuate the declared policy of the act and as to the specific provisions which a marketing agreement and order should

The proposed marketing agreement and the proposed order each embodies in similar terms a plan for the regulation of such handling of milk in the Greater Boston, Massachusetts, marketing area as is in the current of interstate, or which directly burdens, obstructs or affects interstate commerce in such milk. Among other things, the proposed marketing agreement and order provide for: (a) selection of a market administrator; (b) classification of milk; (c) minimum prices; (d) payments to producers through the use of a marketwide equalization pool; (e) deductions from payments to producers for marketing services by market administrator; (f) reports of handlers; (g) expense of administration.

It is hereby declared that an emergency exists in the handling of milk in the Greater Boston, Massachusetts, marketing area, which requires a shorter period of notice than fifteen (15) days; and it is hereby determined that the period of notice given is reasonable under the circumstances.

Copies of the proposed marketing agreement and proposed order may be inspected in or procured from the office of the Hearing Clerk, Room O318, South Building, United States Department of Agriculture, Washington, D. C.

/s/ H. A. WALLACE

Secretary of Agriculture

Dated: June 19, 1937 Washington, D. C.

9. On June 24, 1937, the Secretary of Agriculture gave notice of the cancellation of the aforesaid hearings. A copy of the notice follows:

ORDER CANCELLING HEARINGS WITH RESPECT TO A PRO-POSED MARKETING AGREEMENT AND A PROPOSED ORDER REGULATING THE HANDLING OF MILK IN THE GREATER BOSTON, MASSACHUSETTS, MARKETING AREA

WHEREAS, H. A. Wallace, Secretary of Agriculture of the United States, issued on June 19, 1937, a notice of hearings with respect to a proposed marketing and

agreement and a proposed order regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, to be held at the following places on the dates set forth herein opposite such respective places:

St. Johnsbury, Vermont
Augusta, Maine
Boston, Massachusetts
June 29, 1937
June 30, 1937
July 1, 1937

WHEREAS, it is deemed necessary and advisable to cancel such hearings:

Now, Therefore, it is hereby ordered that the hearings hereinabove set forth be cancelled and it is further ordered that the Hearing Clerk, Office of the Solicitor, Department of Agriculture, take appropriate steps to inform interested parties of such cancellation in accordance with the manner prescribed by the General Regulations, Series A, No. 1, as amended, of the Agricultural Adjustment Administration, United States Department of Agriculture, for giving notice of hearings with respect to the issuance of marketing agreements and orders.

IN WITNESS WHEREOF, H. A. Wallace, Secretary of Agriculture of the United States, does hereby execute this order in duplicate and does cause the official seal of the Department of Agriculture to be affixed hereto in the City of Washington, District of Columbia, this 24th day of June, 1937.

/s/ H. A. WALLACE Secretary of Agriculture

10. On June 25, 1937, Harry L. Brown, Acting Secretary of Agriculture, issued the following order, but made no findings or determinations in connection therewith other than those contained in said order:

WHEREAS, H. A. Wallace, Secretary of Agriculture of the United States of America, acting under the pro-

visions of the Agricultural Adjustment Act, as amended, executed an order on August 1, 1936, suspending Order No. 4, regulating the handling of milk in the Greater Boston, Massachusetts, marketing area; and

WHEREAS, the Secretary of Agriculture has determined to terminate said order of suspension;

Now, Therefore, Harry L. Brown, Acting Secretary of Agriculture, acting under the authority vested in him by the Agricultural Marketing Agreement Act of 1937, which re-enacts and further amends Public No. 10, 73d Congress, as amended, hereby terminates, effective as of 12:01 a.m., daylight saving time, July 1, 1937, the suspension of Article 1, Article 2, Article 3, Article 5, Article 6—Section 1, Article 12, Article 13, Article 14, Article 15, and Article 16 of said Order No. 4, and hereby terminates, effective as of 12:01 a.m., daylight saving time, August 1, 1937, the suspension of the remaining provisions of said Order No. 4, and the entire Order No. 4 is hereby declared to be effective on and after the last mentioned date.

In Witness Whereof, Harry L. Brown, Acting Secretary of Agriculture of the United States of America, has executed this termination of suspension of said Order as aforesaid and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this 25th day of June, 1937.

/s/ HARRY L. BROWN
(Acting Secretary of Agriculture)

II. Amendment of Order No. 4

11. On June 24, 1937, the Secretary of Agriculture gave notice of a hearing with respect to a proposal to amend Order No. 4 and with respect to a proposal to amend the marketing agreement tentatively approved on January 18, 1936. The notice was in the following form:

Notice of Hearing with Respect to a Proposal to Amend Order No. 4 Regulating the Handling of Milk in the Greater Boston, Massachusetts Marketing Area, and with Respect to a Proposal to Amend the Marketing Agreement Tentatively Approved January 18, 1936

Whereas, under section 8c of Title I of Public No. 10, 73d Congress, as amended, the Sccretary of Agriculture, hereinafter called the Secretary, issued an order regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, effective 12:01 a.m., eastern standard time, February 9, 1936; and

Whereas, the Secretary tentatively approved a marketing agreement regulating the handling of milk in the said marketing area on January 18, 1936; and

Whereas, the Secretary has reason to believe that an amendment should be made to said order and said marketing agreement; and

Whereas, under the Agricultural Marketing Agreement Act of 1937, which re-enacts and further amends Public No. 10, 73d Congress, as amended, notice of hearing is required in connection with a proposal to amend an order, and the General Regulations, Series A, No. 1, as amended, of the Agricultural Adjustment Administration, U. S. Department of Agriculture, provide for notice and opportunity for hearing upon marketing agreements and orders;

Now, Therefore, pursuant to the said acts and the General Regulations, notice is hereby given of a hearing to be held on a proposal to amend the order regulating the handling of milk in the Greater Boston, Massachusetts, marketing area and the tentatively approved marketing agreement regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, in the Armory, St. Johnsbury, Vermont, on June 30, 1937, at 9:30 a.m., eastern standard time; the Gardner Auditorium, State House, Boston,

Massachusetts, on July 1, 1937, at 9:30 a.m., daylight saving time; and the House of Representatives, State House, Augusta, Maine, July 2, 1937, at 9:30 a.m., eastern standard time.

This public hearing is for the purpose of receiving evidence as to the necessity for (1) revising the minimum prices set forth in said order and said marketing agreement, (2) deleting from said order and said marketing agreement the base rating provisions, and (3) amending any other provisions in, or adding any other provisions to, said order and said marketing agreement.

Copies of the proposal to amend the order and the marketing agreement may be inspected in or procured from the office of the dearing Clerk, Room O318, South Building, U. S. Department of Agriculture, Washington, D. C.

/s/ H. A. WALLACE

(Secretary of Agriculture)

Dated: June 24, 1937 Washington, D. C.

12. Public hearings on the proposed amendment to Order No. 4 and on the proposed amendment to the said marketing agreement were held at St. Johnsbury, Vermont, on June 30, 1937; at Boston, Massachusetts, on July 1, 1937; and at Augusta, Maine, on July 2, 1937. At these hearings interested parties were given an opportunity to introduce evidence and to be heard on the proposed amendments. All of the testimony received at the said hearings was reduced to writing. A certified copy of the testimony and exhibits received at the said hearings and certain documents forwarded to the Secretary by interested parties after the close of the said hearings was introduced in evidence before me as constituting the material before the Secretary at the time of the promulgation of Order No. 4, as amended, and is attached to this report as Appendix B and made a part hereof.

13. Thereafter, the Secretary tentatively approved an amendment to the said marketing agreement and handlers of more than 50% of the volume of milk covered by Order No. 4 as amended (as hereinafter defined) failed to sign such tentatively approved marketing agreement as amended.

14. On July 27, 1937, M. L. Wilson, Acting Secretary of Agriculture, made and issued the following determination which was approved by the President of the United States on the same date as is shown below:

DETERMINATION OF THE SECRETARY OF AGRICULTURE WITH RESPECT TO A PROPOSED ORDER, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE GREATER BOSTON, MASSACHUSETTS, MARKETING AREA

WHEREAS, the Secretary of Agriculture pursuant to the Agricultural Marketing Agreement Act of 1937, which reenacted and further amended Public No. 10, 73d Congress, hereinafter called the act, having reason to believe that the issuance of an amendment to a tentatively approved marketing agreement and to the order theretofore issued with respect to the handling of milk in the Greater Boston, Massachusetts, marketing area, would tend to effectuate the declared policy of the act, gave, on the 24th day of June, 1937, notice of hearings to be held on the 30th day of June, 1937, at St. Johnsbury, Vermont, on the first day of July, 1937, at Boston, Massachusetts, and on the 2nd day of July, 1937, at Augusta, Maine, on a proposed amendment to the tentatively approved marketing agreement and to the order theretofore issued regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, at which times and places all interested parties were afforded an opportunity to be heard on the proposed amendment; and

Whereas, after such hearings and after the tentative approval by the Secretary on the 10th day of July, 1937, of an amendment to the tentatively approved

marketing agreement, handlers of more than 50 per centum of the volume of milk covered by such order, as amended, which is produced or marketed within the Greater Boston, Massachusetts, marketing area, refused or failed to sign such marketing agreement, as amended, relating to milk;

Now, THEREFORE, the Secretary of Agriculture, by virtue of the authority vested in him by the act, does hereby determine:

1. That the refusal or failure of said handlers to sign the said marketing agreement, as amended, tends to prevent the effectuation of the declared policy of the act; and

2. That the issuance of the amendment to the order is the only practical means, pursuant to such policy, of advancing the interests of producers of milk in said

area; and

. 3. That the issuance of the amendment to the order is approved or favored by over 70 per centum of the producers who, during the month of May, 1937, said month being here and now determined by the Secretary to be a representative period, have been engaged in the production of milk for sale in the said area, and who participated in a referendum conducted by the Secretary on July 17, 1937.

IN WITNESS WHEREOF, I, M. L. Wilson, Acting Secretary of Agriculture, have executed this determination and have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this 27th day of July, 1937.

/s/ M. L. Wilson

Acting Secretary of Agriculture

Approved:

/s/ Franklin D. Roosevelt

The President of the United States

Dated: July 27; 1937

15. On July 28, 1937, M. L. Wilson, Acting Secretary of Agriculture, made certain findings and set forth the said findings in an order amending Order No. 4 which the said M. L. Wilson, Acting Secretary of Agriculture, promulgated on the same date. The said findings and order amending Order No. 4 were in the following form:

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
WASHINGTON, D. C.

Order Series—Order No. 4, Amendment No. 1 (Issued by the Secretary of Agriculture July 28, 1937) (Effective 12:01 a. m. E. S. T., August 1, 1937)

ORDER OF THE SECRETARY OF AGRICULTURE ISSUED PURSUANT TO THE AGRICULTURAL MARKETING ACT OF 1937, APPROVED JUNE 3, 1937 (PUBLIC, 137, 75TH CONGRESS), AMENDING ORDER NO. 4 REGULATING THE HANDLING IN INTERSTATE OR FOREIGN COMMERCE, AND SUCH HANDLING AS DIRECTLY BURDENS, OBSTRUCTS, OR AFFECTS INTERSTATE OR FOREIGN COMMERCE, OF MILK IN THE GREATER BOSTON, MASSACHUSETTS, MARKETING AREA

Whereas, pursuant to Public, No. 10, 73rd Congress, as amended, the Secretary of Agriculture, hereinafter called the Secretary, on January 18, 1936, tentatively approved a marketing agreement regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area; and

Whereas, on February 7, 1936, the Secretary issued Order No. 4 regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area, said order being effective 12:01 a.m. eastern standard time, February 9, 1936; and

Whereas, the Secretary, having reason to believe that an amendment should be made to said tentatively approved marketing agreement and to said order, gave, on the 24th day of June 1937, notice of a hearing to be held on the 30th day of June 1937 at St. Johnsbury, Vermont, on the 1st day of July 1937, at Boston, Massachusetts, and on the 2nd day of July 1937 at Augusta, Maine, on a proposed amendment to said tentatively approved marketing agreement and said order, and at said times and places conducted a public hearing at which all interested parties were afforded an opportunity to be heard on the proposed amendment to said tentatively approved marketing agreement and to said order; and

Whereas, after such hearing and after the approval by the Secretary, in accordance with the powers and functions vested in him by the Agricultural Marketing Agreement Act of 1937, which reenacted and further amended Public No. 10, 73rd Congress, as amended, said Agricultural Marketing Agreement Act being hereinafter referred to as the act, on the 10th day of July 1937, of an amendment to said tentatively approved marketing agreement, handlers of more than 50 per centum of the volume of milk covered by such order, as amended, which is marketed within the Greater Boston, Massachusetts, Marketing Area, refused or failed to sign such tentatively approved marketing agreement, as amended, relating to milk; and

Whereas, the Secretary determined on the 27th day of July 1937, said determination being approved by the President of the United States on the 27th day of July 1937, that said refusal or failure tends to prevent the effectuation of the declared policy of said act, and that the issuance of this amendment to said order is the only practical means, pursuant to such policy, of advancing the interests of producers of milk in said area, and is approved or favored by over 70 per centum of the producers who, during the month of May 1937, said month being determined by the Secretary to be a representative period, have been engaged in the production of milk for sale in the Greater Boston, Massachusetts, Marketing Area, and who voted in a referendum con-

ducted by the Secretary of Agriculture on July 17, 1937; and

Whereas, the Secretary finds upon the evidence introduced at the hearing upon such proposed amendment, said findings being in addition to the findings made upon the evidence introduced at the hearing on said order, said original findings being herewith ratified and affirmed by the Secretary save only as such findings are in conflict with the findings hereinafter set forth:

1. That the minimum prices fixed by this amendment are reasonable and justified by the economic data submitted at the aforementioned hearings; that the prices fixed by this amendment will, over a period of time, tend to give milk sold in the marketing area a purchasing power with respect to articles that producers buy equivalent to the purchasing power of such milk in the base period; that the fixing of such prices does not have for its purpose the maintenance of prices to producers above the levels which were declared in the act to be the policy of Congress to establish; that the method provided for fixing the Class II price is a method which bears a direct and reasonable relationship to the price of cream in the above market;

2. That in view of changes in economic conditions since the date of the original findings, the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for milk so delivered, without the use of a base-rating plan, but with the inclusion of special location differentials, is a fair and reasonable method of distributing to producers the proceeds of sales of milk to handlers;

3. That in view of State laws covering the giving of security by handlers, the giving of security to the Market Administrator for payments to be made by each handler is no longer necessary in order to insure the payment to producers of the minimum prices fixed in the order;

- 4. That all the remaining provisions of this amendment are necessary to effectuate the other provisions of the order, as amended;
- 5. That the order, as amended, regulates the handling of milk in the same manner as and is applicable only to handlers specified in the tentatively approved marketing agreement, as amended, upon which hearings have been held; and
- 6. That the issuance of the amendment to the order and all of the terms and conditions of the order, as amended, will tend to effectuate the declared policy of the act.

Now, THEREFORE, the Secretary of Agriculture, pursuant to the authority vested in him by the Agricultural Marketing Agreement Act of 1937, which reenacted and further amended Public, No. 10, 73d Congress, as amended, hereby orders that Order No. 4, regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area, issued by the Secretary on February 7, 1936, be and it is hereby amended as follows:

A. Delete paragraphs 1, 5 and 9 from section 1 of article I and insert the following as new paragraphs 1 and 5 of section 1 of article I:

"1. 'Act' means the Agricultural Marketing Agreement Act of 1937 which reenacts and further amends Public, No. 10, 73d Congress as amended."

- "5. 'Producer' means any person who, in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the marketing area, produces milk and distributes or delivers to a handler milk of his own production."
- B. Delete paragraph 5 from section 4 of article II and insert in lieu thereof the following:
- "5. Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person, who within fifteen days after the date upon which he is required to perform such acts, has not (a)

made reports pursuant to article V or (b) made payments pursuant to article VIII;"

C. Delete Article III and insert in lieu thereof the following:

"ARTICLE III-CLASSIFICATION OF MILK

"Section 1. Sales and Use Classification.—Milk purchased or handled by handlers shall be classified as follows:

"1. All milk sold or distributed as milk, chocolate milk, or flavored milk and all milk not specifically accounted for as Class II milk shall be Class I milk; and

"2. Milk specifically accounted for (a) as being sold, distributed, or disposed of other than as milk, chocolate milk, or flavored milk and (b) as actual plant shrinkage within reasonable limits shall be Class II milk.

"Sec. 2. Interhandler or Nonhandler Sales .- Milk, including skim milk, sold by a handler to another handler or to a person who is not a handler and who distributes milk or manufactures milk products shall be presumed to be Class I milk. In the event that such selling handler, on or before the date fixed for filing reports pursuant to article V, notifies the Market Administrator that such milk, or a part thereof, has been sold or used by such purchaser other than as Class I milk, such milk, or part thereof, shall be classified as Class II milk; provided, that if such selling handler does not, on or before the fifteenth day after the end of the delivery period during which such sale was made, furnish proof satisfactory to the Market Administrator in support of the above notification, such milk or part thereof shall then be classified as Class I milk and so included in the statement rendered to the selling handler pursuant to paragraph 3 of section 1 of article VIII."

D. Delete sections 1, 2, and 3 of article IV and insert in lieu thereof the following:

"Section 1. Class I Prices to Associations of Producers.—Each handler shall pay any association of

producers for Class I milk containing 3.7 percent butter-

fat not less than the following prices:

"1. \$3.31 per hundredweight for such milk delivered from the plant of such association to such handler's plant located not more than forty miles from the State House in Boston;

"2. \$3.26 per hundredweight for such milk delivered from the plant of such association to such handler at a railroad delivery point not more than forty

miles from the State House in Boston; and

"3. If such milk is delivered containing butterfat more or less than 3.7 percent such handler shall add or subtract, as the case may be, a differential for each one-tenth of one percent above or below 3.7 per-. cent, which differential is the result of dividing by 330 the cream price used in paragraph 1 of section 3 of this article.

"Sec. 2. Class I Prices to Producers.—Each handler shall pay producers, in the manner set forth in article VIII, for Class I milk delivered by them, not less than the following prices:

"1. \$3.19 per hundredweight for such milk delivered from producers' farms to such handler's plant located not more than forty miles from the State House in

Boston:

- "2. \$3.01 per hundredweight for such milk delivered from producers' farms to such handler's plant located more than forty miles from the State House in Boston, less an amount per hundredweight equal to the freight from the railroad shipping point for such handler's plant to such handler's railroad delivery point in the Marketing Area. Such freight shall be calculated according to applicable rail tariffs for the transportation in carload lots of milk in forty-quart cans and each such can shall be considered to contain 85 pounds of milk:
- "3. For the purpose of this section the milk which was sold or distributed during each delivery period, by

each handler as Class I milk shall be presumed to have been that milk which was received at such handler's plant located not more than forty miles from the State House in Boston (a) directly from producers' farms and (b) from the nearest plants located more than forty miles from the State House in Boston.

"Section 3. Class II prices.—Each handler shall pay producers, in the manner set forth in article VIII, for Class II milk not less than the following prices per hundredweight:

"1. In the case of such milk delivered to a handler's plant located not more than forty miles from the State House in Boston, a price which the Market Administrator shall calculate as follows: Divide by 33 the weighted average price per forty-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, multiply the result by 3.7, add 2.125 times the average of the weekly quotations per pound of domestic, 20-30 mesh, casein in bags delivered in carload lots at New York, as published by the Oil-Paint and Drug Reporter during such delivery period, and subtract 42 cents; and

"2. In the case of such milk delivered to a handler's plant located more than forty miles from the State House in Boston, the price calculated by the Market Administrator, pursuant to paragraph 1 of this section; minus 6 cents."

E. Delete the words following the word "handlers" in paragraph 1 of section 1 of article V; and delete section 3 of article V and insert in lieu thereof the following:

"SEC. 3. Reports of Payments to Producers.—Each handler shall submit to the Market Administrator within thirty days after the end of each delivery period his producer pay roll for such delivery period which

shall show for each producer: (a) The total delivery of milk with the average butterfat test thereof and (b) the net amount of such producer's payment, with the prices, deductions, and charges involved."

- F. Delete section 2 of article VI and substitute therefor the following:
- "Sec. 2. Milk Purchased from Producers.—In the case of a handler who is also a producer and who purchased milk from producers, the Market Administrator shall, before making the computations set forth in article VII, (a) exclude from such handler's Class I milk up to but not exceeding 90 percent of the quantity of milk produced and sold by him, (b) exclude the milk purchased by him in each class from other handlers, and (c) exclude from his remaining Class II milk the balance of the milk produced and sold by him."
- G. Delete article VII and insert in lieu thereof the following:
- "ARTICLE VII—DETERMINATION OF UNIFORM PRICES TO PRODUCERS
- "Section 1. Computation of Value of Milk for Each Handler.—For each delivery period the Market Administrator shall compute, subject to the provisions of article VI, the value of milk sold or used by each handler, which was not purchased from other handlers, by (a) multiplying the quantity of such milk in each class by the price applicable pursuant to sections 2, 3, and 4 of article IV and (b) adding together the resulting value of each class.
- "SEC. 2. Computation and Announcement of Uniform Prices.—The Market Administrator shall compute and announce the uniform prices per hundredweight of milk delivered during each delivery period in the following manner:
- "1. Combine into one total the respective values of milk, computed pursuant to section 1 of this article,

for each handler who made the report as required by section 1 of article V for such delivery period and who made the payments required by article VIII for milk received during the delivery period next preceding but one;

"2. Add the total net amount of the differentials ap-

plicable pursuant to section 4 of article VIII:

"3. Subtract the total amount to be paid to producers pursuant to paragraph 2 of section 1 of article VIII;

"4. Divide by the total quantity of milk which is included in these computations, except that milk required to be paid for pursuant to paragraph 2 of section 1 of article VIII;

"5. Subtract not less than four cents nor more than five cents for the purpose of retaining a cash balance in connection with the payments set forth in paragraph 3 of section 1 of article VIII:

"6. Add an amount which will prorate, pursuant to section 3 of this article, any cash balance available; and

- "7. On or before the twelfth day after the end of each delivery period mail to all handlers and publicly announce (a) such of these computations as do not disclose information confidential pursuant to the act, (b) the blended price per hundredweight which is the result of these computations, and (c) the Class II price.
- "Sec. 3. Proration of Cash Balance.—For each delivery period the Market Administrator shall prorate, by an appropriate addition pursuant to section 2 of this article, the cash balance, if any, in his hands from payments made by handlers for milk received during the delivery period next preceding but one, to meet obligations arising out of paragraph 3 of section 1 of article VIII."
- H. Delete articles VIII and XI and insert in lieu thereof the following:

"ARTICLE VIII-PAYMENTS FOR MILK

"Section 1. Time and Method of Payment.—On or before the 25th day after the end of each delivery period each handler shall make payment, subject to the butterfat differential set forth in section 3 of this article, for the total value of milk received during such delivery period as required to be computed pursuant to section 1 of article VII, as follows:

"1. To each producer, except as set forth in paragraph 2 of this section, at the blended price per hundredweight computed pursuant to section 2 of article VII, subject to the differentials set forth in section 4 of this article, for the quantity of milk delivered by

such producer:

"2. To any producer, who did not regularly sell milk for a period of thirty days prior to the effective date hereof to a handler or to persons within the Marketing Area, at the Class II price, in effect for the plant at which such producer delivered milk, for all the milk delivered by such producer during the period begining with the first regular delivery of such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month;

"3. To producers, through the Market Administrator, by paying to or receiving from the Market Administrator, as the case may be the amount by which the payments made pursuant to paragraphs 1 and 2 of this section are less than, or exceed, the value of milk as required to be computed for such handler pursuant to section 1 of article VII, as shown in a statement rendered by the Market Administrator on or before the twentieth day after the end of such delivery period.

"SEC. 2. Errors in Payments.—Errors in making any of the payments prescribed in this article shall be corrected not later than the date for making payments next following the determination of such errors.

"Sec. 3. Butterfat Differential .- If any producer has delivered to any handler during any delivery period milk having an average butterfat content other than 3.7 percent, such handler shall, in making the payments prescribed by paragraphs 1 and 2 of section 1 of this article to such producer, add for each onetenth of one percent of average butterfat content above 3.7 percent, or deduct for each one-tenth of one percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the Market Administrator as follows: Divide by 33 the weighted average price per forty-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, subtract eight cents, and divide the result by ten.

"Sec. 4. Location Differentials.—The payments to be made to producers by handlers pursuant to paragraph 1 of section 1 of this article shall be subject to differentials as follows:

"1. With respect to milk delivered by a producer to a handler's plant located more than forty miles from the State House in Boston, there shall be deducted an amount per hundredweight equal to the freight (considering 85 pounds of milk per can), according to the tariff currently approved by the Interstate Commerce Commission for the transportation, in carload lots of milk in forty-quart cans, to Boston from the zone of location of the handler's plant.

"2. With respect to milk delivered by a producer to a handler's plant located not more than forty miles from the State House in Boston, there shall be added eighteen cents per hundredweight.

"3. With respect to milk delivered by a producer whose farm is located more than forty miles, but not more than eighty miles, from the State House in Bos-

ton, there shall be added twenty-three cents per hundrédweight.

"4. With respect to milk delivered by a producer whose farm is located not more than 1 rty miles from the State House in Boston, there shall be added 46 cents per hundredweight unless such addition gives a result greater than \$3.19 in which event there shall be added an amount which will give a result of \$3.19.

"Sec. 5. Other Differentials.-In making the payments to producers set forth in paragraphs 1 and 2 of section 1 of this article, handlers may make deduc-

tions as follows:

"1. With respect to all milk delivered by producers to the plant of a handler which is located more than forty miles from the State House in Boston and which is located more than two miles from a railroad shipping point, an amount not greater than ten cents per hundredweight; provided, that such deduction has been approved and made public by the Market Administrator prior to the time of payment.

"2. With respect to milk delivered by producers to a handler's plant which is located more than fourteen miles, but not more than forty miles, from the State House in Boston, an amount equal to ten cents per hundredweight of Class I milk actually sold or distributed in the Marketing Area from such plant, such total amount to be deducted pro rata on all milk de-

livered by such producer.

"3. With respect to milk delivered by producers to any handler's plant from which the average daily shipment of Class I milk during any delivery period is less than 21,500 pounds, an aggregate amount, prorated among producers delivering milk to such plant equal to the difference between the freight to the marketing area at the carload rate and at the less than carload rate for the Class I milk shipped during such delivery period:

"ARTICLE IX-MARKETING SERVICES

Except as set forth in section 2, each handler shall deduct an amount not exceeding two cents per hundred-weight (the exact amount to be determined by the Market Administrator, subject to review by the Secretary) from the payments made direct to producers pursuant to article VIII with respect to all milk delivered to such handler during each delivery period by producers and shall pay such deductions to the Market Administrator on or before the 25th day after the end of such delivery period. Such monies shall be expended by the Market Administrator for market information to and for verification of weights, sampling, and testing of milk purchased from said producers.

"Sec. 2. Producers' Cooperative Association.—In the case of producers for whom a cooperative association, which the Secretary determines to be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the 'Capper-Volstead Act', is actually performing, as determined by the Secretary, the services set forth in section 1 of this article, each handler shall make, in lieu of the deductions specified in section 1 of this article, such deductions from the payments to be made direct to such producers, pursuant to article VIII, as are authorized by such producers and, on or before the 25th day after the end of each delivery period, pay over such deductions to the association rendering such service."

I. Delete article XI and renumber the remaining articles consecutively beginning with the number XI.

Now, THEREFORE, M. L. Wilson, Acting Secretary of Agriculture, acting under the provisions of the Agricultural Marketing Agreement Act of 1937, which reenacted and further amended Public, No. 10, 73d Congress, as amended, does hereby execute in duplicate and issue this amendment to Order No. 4 regulating the

handling of milk in the Greater Boston, Massachusetts, Marketing Area, under his hand and the official seal of the Department of Agriculture, in the City of Washington, District of Columbia, on this 28th day of July, 1937, and, pursuant to the provisions hereof, declares this amendment to be effective on and after 12:01 a.m. E. S. T., August 1, 1937.

M. L. WILSON Acting Secretary of Agriculture.

16. The said Order No. 4, as amended by the said order issued by the said M. L. Wilson, on July 28, 1937, is hereinafter referred to as "Order No. 4 as amended" or as "the Order." Order No. 4 as amended follows:

Issued July 28, 1937

UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL ADJUSTMENT ADMINISTRATION

Compilation of Order No. 4 Regulating the Handling of Milk in the Greater Boston, Mass., Marketing Area, with the Incorporation Amendment No. 1 of August 1937

Order No. 4, issued by the Secretary of Agriculture February 7, 1936, effective 12:01 a. m., E. S. T., February 9, 1936; Amendment issued by the Secretary July 28, 1937, effective 12:01 a. m., E. S. T., August 1, 1937

The findings, made by the Secretary at the time of issuance of Order No. 4 and the amendment to Order No. 4, have been eliminated from this document for the sake of brevity.

ARTICLE I-DEFINITIONS

Section 1. Terms.—The following terms shall have the following meanings:

1. "Act" means the Agricultural Marketing Agreement Act of 1937 which reenacts and further amends Public, No. 10, 73d Congress, as amended.

- 2. "Secretary" means the Secretary of Agriculture of the United States.
- 3. "Greater Boston, Massachusetts, Marketing Area", hereinafter called the "Marketing Area", means the territory included within the boundary lines of the cities and towns of Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham, Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Winchester, Winthrop, and Woburn, Massachusetts.

4. "Person" means any individual, partnership, corporation, association, and any other business unit.

5. "Producer" means any person who, in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the Marketing Area, produces milk and distributes, or delivers to a handler, milk of his own production.

6. "Handler" means any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating, who engages in such handling of milk, which is sold as milk or cream in the Marketing Area, as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in milk and its products.

7. "Market Administrator" means the person designated pursuant to article II as the agency for the administration hereof.

8. "Delivery period" means the current marketing period from the first to, and including, the fifteenth day of each month, and from the sixteenth to, and including, the last day of each month.

ARTICLE II-MARKET ADMINISTRATOR

Section 1. Selection, Removal, and Bond.—The Market Administrator shall be selected by the Secre-

tary and shall be subject to removal by him at any time. The Market Administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

SEC. 2. Compensation.—The Market Administrator shall be entitled to such reasonable compensation as may be determined by the Secretary.

Sec. 3. Powers.—The Market Administrator shall

have power:

1. To administer the terms and provisions hereof;

2. To receive, investigate, and report to the Secretary complaints of violations of the terms and provisions hereof.

Sec. 4. Duties .- The Market Administrator, in addition to the duties hereinafter described, shall:

1. Keep such books and records as will clearly re-

flect the transactions provided for herein;

2. Submit his books and records to examination by the Secretary at any and all times;

3. Furnish such information and such verified re-

ports as the Secretary may request;

4. Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the Market Administrator;

5. Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 15 days after the date upon which he is required to perform such acts, has not (a) made reports pursuant to article V or (b) made payments pursuant to article VIII;

6. Employ and fix the compensation of such persons as may be necessary to enable him to administer

the terms and provisions hereof; and

7. Pay, out of the funds provided by article X, (a) the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the Market Administrator, (b) his own compensation, and (c) all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

Sec. 5. Responsibility.—The Market Administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler, or to any other person, for errors in judgment, for mistakes, or for other acts either of commission or omission, except for his own willful misfeasance, malfeasance, or dishonesty.

ARTICLE III-CLASSIFICATION OF MILK .

Section 1. Sales and Use Classification.—Milk purchased or handled by handlers shall be classified as follows:

- 1. All milk sold or distributed as milk, chocolate milk, or flavored milk and all milk not specifically accounted for as Class II milk shall be Class I milk; and
- 2. Milk specifically accounted for (a) as being sold, distributed, or disposed of other than as milk, chocolate milk, or flavored milk and (b) as actual plant shrinkage within reasonable limits shall be Class II milk.
- SEC. 2. Inter-Handler or Non-Handler Sales.—Milk, including skim milk, sold by a handler to another handler or to a person who is not a handler and who distributes milk or manufactures milk products shall be presumed to be Class I milk. In the event that such selling handler, on or before the date fixed for filing reports pursuant to article V, notifies the Market Administrator that such milk, or a part thereof, has been sold or used by such purchaser other than as Class I milk, such milk, or part thereof, shall be classified as Class II milk; provided, that if such selling handler does not, on or before the fifteenth day after the end

of the delivery period during which such sale was made, furnish proof satisfactory to the Market Administrator in support of the above notification, such milk or part thereof shall then be classified as Class I milk and so included in the statement rendered to the selling handler pursuant to paragraph 3 of section 1 of article VIII.

ARTICLE IV-MINIMUM PRICES

Section 1. Class I Prices to Associations of Producers.-Each handler shall pay any association of producers for Class I milk containing 3.7 percent butterfat not less than the following prices:

1. \$3.31 per hundredweight for such milk delivered from the plant of such association to such handler's plant located not more than 40 miles from the State

House in Boston:

2. \$3.26 per hundredweight for such milk delivered from the plant of such association to such handler at a railroad delivery point not more than 40 miles from

the State House in Boston; and

- 3. If such milk is delivered containing butterfat more or less than 3.7 percent such handler shall add or subtract, as the case may be, a differential for each one-tenth of one percent above or below 3.7 percent, which differential is the result of dividing by 330 the. cream price used in paragraph 1 of section 3 of this article.
- SEC. 2. Class I Prices to Producers.—Each handler shall pay producers, in the manner set forth in article VIII, for Class I milk delivered by them, not less than the following prices:
- . 1. \$3.19 per hundredweight for such milk delivered from producers' farms to such handler's plant located not more than 40 miles from the State House in Bos-
- 2. \$3.01 per hundredweight for such milk delivered from producers' farms to such handler's plant located

more than 40 miles from the State House in Boston, less an amount per hundredweight equal to the freight from the railroad shipping point for such handler's plant to such handler's railroad delivery point in the Marketing Area. Such freight shall be calculated according to applicable rail tariffs for the transportation in carload lots of milk in 40-quart cans and each such can shall be considered to contain 85 pounds of milk;

3. For the purpose of this section the milk which was sold or distributed, during each delivery period, by each handler as Class I milk shall be presumed to have been that milk which was received at such handler's plant located not more than 40 miles from the State House in Boston (a) directly from producers' farms and (b) from the nearest plants located more than 40 miles from the State House in Boston.

Sec. 3. Class II Prices.—Each handler shall pay producers, in the manner set forth in article VIII, for Class II milk not less than the following prices per hundredweight:

1. In the case of such milk delivered to a handler's plant located not more than 40 miles from the State House in Boston, a price which the Market Administrator shall calculate as follows: Divide by 33 the weighted average price per 40-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, multiply the result by 3.7, and add 2.125 times the average of the weekly quotations per pound of domestic, 20-30 mesh, casein in bags delivered in carload lots at New York, as published by the Oil, Paint and Drug Reporter during such delivered period, and subtract 42 cents; and

2. In the case of such milk delivered to a handler's plant located more than 40 miles from the State House in Boston, the price calculated by the Market Admin-

istrator, pursuant to paragraph 1 of this section, minus 6 cents.

SEC. 4. Sales Outside the Marketing Area.—The price to be paid by each handler to associations of producers or to producers, in the manner set forth in article VIII, for milk utilized as Class I milk outside the Marketing Area, shall be the price applicable pursuant to sections 1 and 2 of this article adjusted by (a) the difference between such applicable price and the price ascertained by the Market Administrator as the prevailing price paid by processors for milk of equivalent use in the market where such Class I milk is utilized and (b) the difference between the freight allowance, if any, set forth in paragraph 2 of section 2 of this article and an amount equal to the carload freight rate approved by the Interstate Commer-* Commission for movement of milk in 40-quart cans from the shipping point for the plant where such Class I milk is received from producers to the railroad delivery point serving the market where such Class I milk is sold; provided, that (1) if the market where such Class I milk is utilized is less than 10 miles from the plant where such Class I milk is received from producers, the railroad shipping point for such plant shall be presumed to be the railroad delivery point serving such market, and (2) if the market where such Class I milk is utilized is located in Barnstable, Plymouth, Norfolk, Dukes, and Nantucket Counties, Massachusetts, such handler's railroad delivery point in the Marketing Area shall be considered to be the railroad. delivery point serving such market.

Sec. 5. Publication of Class II Prices.—On or before the fifth day after the end of each delivery period, the Market Administrator shall publicly announce the Class II price in effect for such delivery period.

ARTICLE V-REPORTS OF HANDLERS

Section 1. Periodic Reports.—On or before the eighth day after the end of each delivery period, each handler shall, except as set forth in section 1 of article VI, with respect to milk or cream which was, during such delivery period, (a) received from producers, (b) received from handlers, or (c) produced by such handler, report to the Market Administrator in the detail and form prescribed by the Market Administrator, as follows:

- 1. The receipts at each plant from producers who are not handlers;
- 2. The receipts at each plant from any other handler, including any handler who is also a producer;
- 3. The quantity, if any, produced by such handler; and
- 4. The respective quantities of milk which were sold, distributed, or used, including sales to other handlers, for the purpose of classification pursuant to article III.
- SEC. 2. Reports as to Producers.—Each handler shall report to the Market Administrator:
- 1. Within 10 days after the Market Administrator's request with respect to any producer for whom such information is not in the files of the Market Administrator, and with respect to a period or periods of time designated by the Market Administrator, (a) the name and address, (b) the total pounds of milk delivered, (c) the average butterfat test of milk delivered, and (d) the number of days upon which deliveres were made; and
- 2. As soon as possible after first receiving milk from any producer: (a) The name and address of such producer, (b) the date upon which such milk was first received, (c) the plant at which such producer delivered milk, and (d) the plant, if known, at which such producer delivered milk immediately prior to the beginning of delivery to such handler.

SEC. 3. Reports of Payments to Producers.—Each handler shall submit to the Market Administrator within 30 days after the end of each delivery period his producer payroll for such delivery period which shall show for each producer: (a) The total delivery of milk with the average butterfat test thereof and (b) the net amount of such producer's payment, with the prices, deductions, and charges involved.

SEC. 4. Outside Cream Purchases.—Each handler shall report, as requested by the Market Administrator, his purchases, if any, of bottling quality cream from handlers who receive no milk from producers, showing the quantity and the source of each such purchase and the cost thereof at Boston.

SEC. 5. Verification of Reports.—In order that the Market Administrator may submit verified reports to the Secretary pursuant to paragraph 3 of section 4 of article II, each handler shall permit the Market Administrator or his agent, during the usual hours of business, to (a) verify the information contained in reports submitted in accordance with this article and (b) weigh, sample, and test milk for butterfat.

ARTICLE VI HANDLERS WHO ARE ALSO PRODUCERS

Section 1. Application of Provisions.—No provision hereof shall apply to a handler who is also a producer and who purchases no milk from producers or an association of producers, except that such handler shall make reports to the Market Administrator at such time and in such manner as the Market Administrator may request.

SEC. 2. Milk Purchased from Producers.—In the case of a handler who is also a producer and who purchased milk from producers, the Market Administrator shall, before making the computations set forth in article VII, (a) exclude from such handler's class I milk up to but not exceeding 90 percent of the quantity

of milk produced and sold by him, (b) exclude the milk, purchased by him in each class from other handlers, and (c) exclude from his remaining Class II milk the balance of the milk produced and sold by him.

ARTICLE VII—DETERMINATION OF UNIFORM PRICES TO PRODUCERS

Section 1. Computation of Value of Milk for Each Handler.—For each delivery period the Market Administrator shall compute, subject to the provisions of article VI, the value of milk sold or used by each handler, which was not purchased from other handlers, by (a) multiplying the quantity of such milk in each class by the price applicable pursuant to sections 2, 3, and 4 of article IV and (b) adding together the resulting value of each class.

SEC. 2. Computation and Announcement of Uniform Prices.—The Market Administrator shall compute and announce the uniform prices per hundredweight of milk delivered during each delivery period in the following manner:

1. Combine into one total the respective values of milk, computed pursuant to section 1 of this article, for each handler who made the report as required by section 1 of article V for such delivery period and who made the payments required by article VIII for milk received during the delivery period next preceding but one;

2. Add the total net amount of the differentials applicable pursuant to section 4 of article VIII;

3. Subtract the total amount to be paid to producers pursuant to paragraph 2 of section 1 of article VIII;

4. Divide by the total quantity of milk which is included in these computations except that milk required to be paid for pursuant to paragraph 2 of section 1 of article VIII;

5. Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in

connection with the payments set forth in paragraph 3 of section 1 of article VIII;

- 6. Add an amount which will prorate, pursuant to section 3 of this article, any cash balance available; and
- 7. On or before the twelfth day after the end of each delivery period mail to all handlers and publicly announce (a) such of these computations as do not disclose information confidential pursuant to the Act, (b) the blended price per hundredweight which is the result of these computations, and (c) the Class II price.
- SEC. 3. Proration of Cash Balance.—For each delivery period the Market Administrator shall prorate, by an appropriate addition pursuant to section 2 of this article, the cash balance, if any, in his hands from payments made by handlers for milk received during the delivery period next preceding but one, to meet obligations arising out of paragraph 3 of section 1 of article VIII.

ARTICLE VIII-PAYMENTS FOR MILK

Section 1. Time and Method of Payment.—On or before the twenty-fifth day after the end of each delivery period, each handler shall make payment, subject to the butterfat differential set forth in section 3 of this article, for the total value of milk received during such delivery period as required to be computed pursuant to section 1 of article VII, as follows:

1. To each producer, except as set forth in paragraph 2 of this section, at the blended price per hundredweight computed pursuant to section 2 of article VII, subject to the differentials set forth in section 4 of this article, for the quantity of milk delivered by such producer;

?. To any producer, who did not regularly sell milk for a period of 30 days prior to the effective date hereof to a handler or to persons within the Marketing Area, at the Class II price, in effect for the plant at which such producer delivered milk, for all the milk delivered by such producer during the period beginning with the first regular delivery of such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month;

3. To producers, through the Market Administrator, by paying to or receiving from the Market Administrator, as the case may be, the amount by which the payments made pursuant to paragraphs 1 and 2 of this section are less than, or exceed, the value of milk as required to be computed for such handler pursuant to section 1 of article VII, as shown in a statement rendered by the Market Administrator on or before the twentieth day after the end of such delivery period.

SEC. 2. Errors in Payments.—Errors in making any of the payments prescribed in this article shall be corrected not later than the date for making payments next following the determination of such errors.

SEC. 3. Butterfat Differential.—If any producer has delivered to any handler during any delivery period milk having an average butterfat content other than 3.7 percent, such handler shall, in making the payments prescribed by paragraphs 1 and 2 of section 1 of this article to such producer, add for each one-tenth of 1 percent of average butterfat content above 3.7 percent or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent an amount per hundredweight which shall be calculated by the Market Administrator as follows: Divide by 33 the weighted average price per 40-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, subtract 8 cents, and divide the result by 10.

SEC. 4. Location Differentials.—The payments to be made to producers by handlers pursuant to paragraph 1 of section 1 of this article shall be subject to

differentials as follows:

1. With respect to milk delivered by a producer to a handler's plant located more than 40 miles from the State House in Boston, there shall be deducted an amount per hundredweight equal to the freight (considering 85 pounds of milk per can), according to the tariff currently approved by the Interstate Commerce Commission for the transportation, in carload lots of milk in 40-quart cans, to Boston from the zone of location of the handler's plant.

2. With respect to milk delivered by a producer to a handler's plant located not more than 40 miles from the State House in Boston, there shall be added 18

cents per hundredweight.

3. With respect to milk delivered by a producer, whose farm is located more than 40 miles, but not more than 80 miles, from the State House in Boston, there

shall be added 23 cents per hundredweight.

4. With respect to milk delivered by a producer, whose farm is located not more than 40 miles from the State House in Boston, there shall be added 46 cents per hundredweight unless such addition gives a result greater than \$3.19, in which event there shall be added an amount which will give a result of \$3.19.

SEC. 5. Other Differentials.—In making the payments to producers set forth in paragraphs 1 and 2 of section 1 of this article, handlers may make deductions

as follows:

1. With respect to all milk delivered by producers to the plant of a handler which is located more than 40 miles from the State House in Boston and which is located more than 2 miles from a railroad shipping point, an amount not greater than 10 cents per hundredweight; provided, that such deduction has been approved and made public by the Market Administrator prior to the time of payment.

2. With respect to milk delivered by producers to a handler's plant which is located more than 14 miles, but not more than 40 miles from the State House in

Boston, an amount equal to 10 cents per hundredweight of Class I milk actually sold or distributed in the Marketing Area from such plant, such total amount to be deducted pro rata on all milk delivered by such

producers.

3. With respect to milk delivered by producers to any handler's plant from which the average daily shipment of Class I milk during any delivery period is less than 21,500 pounds, an aggregate amount, pro rated among producers delivering milk to such plant, equal to the difference between the freight to the marketing area at the carload rate and at the less than carload rate for the Class I milk shipped during such delivery period.

ARTICLE IX-MARKETING SERVICES

Section 1. Deductions for Marketing Services.— Except as set forth in section 2, each handler shall deduct an amount not exceeding 2 cents per hundred-weight (the exact amount to be determined by the Market Administrator, subject to review by the Secretary) from the payments made direct to producers pursuant to article VIII with respect to all milk delivered to such handler during each delivery period by producers and shall pay such deductions to the Market Administrator on or before the twenty-fifth day after the end of such delivery period. Such monies shall be expended by the Market Administrator for market information to, and for verification of weights, sampling, and testing of milk purchased from, said producers.

SEC. 2. Producers' Cooperative Association.—In the case of producers for whom a cooperative association, which the Secretary determines to be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act", is actually performing, as determined by the Secretary, the services set forth in section 1 of this article, each handler shall make, in lieu of the de-

ductions specified in section 1 of this article, such deductions from the payments to be made direct to such producers, pursuant to article VIII, as are authorized by such producers and, on or before the twenty-fifth day after the end of each delivery period, pay over such deductions to the association rendering such service.

ARTICLE X-EXPENSE OF ADMINISTRATION

Section 1. Payments by Handlers.—As his pro rata share of the expense of the administration hereof, each handler, except as set forth in section 1 of article VI, shall, on or before the twenty-fifth day after the end of each delivery period, pay to the Market Administrator a sum not exceeding 2 cents per hundredweight with respect to all milk actually delivered to him during such delivery period by producers or produced by him, the exact sum to be determined by the Market Administrator subject to review by the Secretary; provided, that each handler, which is a cooperative association of producers, shall pay such pro rata share of expense of administration only on that milk actually received from producers at a plant of such association.

SEC. 2. Suits by Market Administrator.—The Market Administrator may maintain a suit in his own name against any handler for the collection of such handler's pro rata share of expense set forth in this article.

ARTICLE XI-EFFECTIVE TIME, SUSPENSION, AND TERMI-

Section 1. Effective Time.—The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to section 2 of this article.

SEC. 2. Suspension and Termination.—Any or all provisions hereof, or any amendment hereto, shall be

suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions

of the act authorizing it cease to be in effect.

SEC. 3. Effect.—Unless otherwise provided by the Secretary in the notice of amendment, suspension, or termination of any or all provisions hereof, the amendment, suspension, or termination shall not (a) affect, waive, or terminate any right, duty, obligation, or liability which shall nave arisen or may thereafter arise in connection with any provisions hereof; (b) release or waive any violation hereof occurring prior to the effective date of such amendment, suspension, or termination; (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to any such violation.

SEC. 4. Continuing Power and Duty.—If, upon the suspension or termination of any or all provisions hereof, there are any chligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handlers, by the Market Administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination; provided, that any such acts required to be performed by the Market Administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the

Secretary may designate.

The Market Administrator, or such other person as the Secretary may designate, (a) shall continue in such capacity until discharged by the Secretary, (b) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the Market Administrator, or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full

title to all funds, property, and claims vested in the Market Administrator or such person pursuant hereto.

SEC. 5. Liquidation After Suspension or Termination.—Upon the suspension or termination of any or all provisions hereof the Market Administrator, or such person as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the Market Administrator's office, and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the Market Administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

ARTICLE XII-LIABILITY

Section 1. Handlers.—The liability of the handlers hereunder is several and not joint and no handlers shall be liable for the default of any other handler.

17. No findings or determinations made by the Secretary of Agriculture (or any Acting Secretary of Agriculture) in connection with the promulgation of the original Order No. 4 or the amendment thereof other than those above set forth were introduced in evidence.

PART TWO

THE HISTORY OF AND ECONOMIC CONDITIONS IN THE BOSTON
MARKET

I. The Boston Milkshed

A. The Area Covered.

18. The area in which farms are located that produce the fluid milk supply for a metropolitan area is ordinarily described as the "milkshed." In 1900 the milkshed for the Boston market extended 70 to 80 miles out from the city of Boston into southern New Hampshire and Maine; out to the Connecticut River, or somewhat beyond, in northern Massachusetts; and down into eastern Connecticut. 1910 the area had extended into eastern New York to about Rensselaer and Washington Counties; up into Vermont as far as Newport, Vermont; into Canada to a certain extent; and had extended further into Maine. In 1920 the milkshed had extended all through Vermont and into the larger part of Maine. By 1926 the area was somewhat more extended and also extended into Canada to a greater extent. The growth of the Boston milkshed from 1900 to its peak in 1926 is best illustrated by the maps appearing on the following page.

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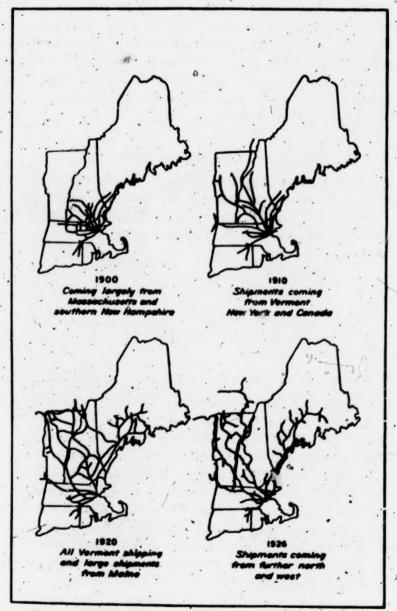


Fig. 5. SOUNCES OF MILK AND CREAM BY RAIL TO BOSTON MARKET.

The expansion of the milk shed of metropolitan Boston has been rapid during the past two decades.

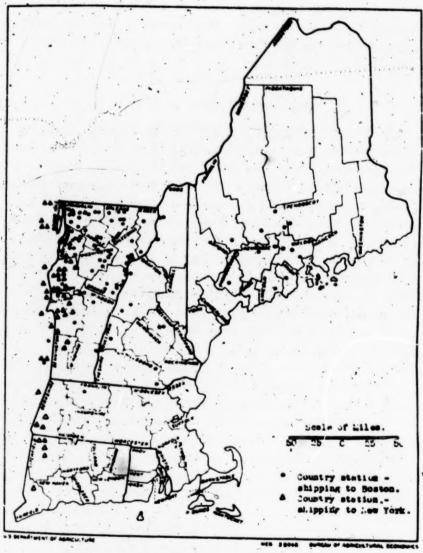
19. Since 1926 the area included in the Boston milkshed has contracted somewhat. The present milkshed may be described as taking in that part of Maine south of Bangor, covering a large part of New Hampshire, covering practically all of Vermont, though a somewhat smaller part of the western side of Vermont than in 1926, taking in none of Canada, and taking in a somewhat smaller area in eastern New York. The present extent of the Boston milkshed is best illustrated by the map on the following page which shows the location of all country stations operated by handlers supplying the Boston Market.

B. Present Participation in Boston Market.

20. Considering the total amount of milk coming to the Boston market as 100 percent, the average participation for each of the various States in the Boston milkshed during the period 1930 to 1936 was as follows:

Vermont	58	percent
New York	.7	
Maine	12	
Massachusetts	11	. 66
New Hampshire	12	66

- C. Economic Limitations on the Size of the Milkshed
- 21. There are certain factors which naturally limit the extent of the area supplying fluid milk to a metropolitan center. The extent of the area depends upon the ability to ship milk to market in a condition which complies with the health regulations in the market. Because of the perishable nature of milk and the fact that it is a bulky product, it is not profitable to ship it a long distance. Within the milk-shed the general practice is for a handler who has more than one country receiving plant to ship milk to the market from the nearest receiving stations and to ship cream from the more distant stations.



Location of country stations in the milkshed, supplying the Greater Boston Marketing Area

22. The area supplying milk for manufacturing purposes is much broader than the area supplying milk for fluid purposes. One reason for this is that the milk can be converted into a concentrated product near the source of supply thereby reducing the shipping costs in relation to the cost of transporting the raw milk. Furthermore, the concentrated products are less perishable in nature and will stand longer shipment.

II. Origin of the Boston Milk Supply.

23. The milk supply for the Boston marketing area as defined in the order originates largely in States other than Massachusetts. As has been pointed out in Finding 20 supra, only 11 percent of the fluid milk consumed in the Boston marketing area during the period 1930 to 1936 originated in Massachusetts. The origin of the Boston milk supply is best illustrated by the following tabulations. (Table A shows the total number of 40-quart units of fluid milk received in the Boston metropolitan area by States of origin for the years 1932 to 1937, inclusive. Table B shows the total number of 40-quart units of fluid milk received in the Boston metropolitan area by States of origin for each month during the year 1937. Table C shows the total number of 40-quart units of cream received in the Boston metropolitan area by States of origin for the years 1932 to 1937, inclusive. Table D shows the total number of 40-quart units of cream received in the Boston metropolitan area by States of origin for each month during the year 1937. Table E shows the total number of 40-quart units of fresh condensed milk received in the Boston metropolitan area by States of origin for the years 1932 to 1937 inclusive. Table F shows the total number of 40-quart units of fresh condensed milk received in the Boston metropolitan area by States of origin for each month during the year 1937):

TABLE A

Receipts of milk at the Boston and Metropolitan Area by States of origin, 1932-1937

Vermont New York Maine	40-duart					-
Vermont New York Maine	units	40-quart units	40-quart units	40-quart	40-quart	40-quart
New York Maine	3,840,926	3,376,147	3,415,786	3,124,723	2,911,619	2,979,698
Maine	352,067	359,366	341,497	430,309	385,443	403,857
	759,217	769,494	. 688,063	692,245	783,238	858,485
Massachusetts	596,958	544,091	530,629	718,132	752,030	764.019
New Hampshire	744,764	620,269	765,003	709,664	716,723	575.400
Connecticut	1	.1	1	. 1	1	1
Rhode Island	387	1,883	12,949	37.121	44.402	41 536
Illinois	1	1	. 1		3.289	1
Indiana	1	.1	1	1	200	1
Maryland	1.	1	1.	:1	478	1
Ohio	1	1		1	675	1
Total	6,294,319	5,721,550	5,753,927	5,712,194	5,598,397	5,622,995

Compiled from reports of the Bureau of Agricultural Economics.

TABLE B

FLUID MILK: Receipts at Boston and Metropolitan Area, by state of origin, by months, 1937

- 1	4.	869	103,857	858,485	764,019	575,400	11,536	982
Total	40-qt	2,979,698					41	5,622,
P.	40-qt.	243,742	23,754	69,411	61,195	59,915	1	458,017
Nor.	40-qt.	268,257	23,693	62,703	54,994	56,711	1	466,358
Oet	40-qt.	256,619	30,141	71,483	61,789	48,581	6,140	463,293 428,745 474,068 446,283 479,920 474,007 507,311 501,443 448,797 474,753 466,358 458,017 5,622,995
Sept.	40-qt	239,060	32,219	67,122	58,009	48,810	2,677	448,797
Yng.	40-qt.	289,632	32,264	69,482	59,979	50,986	1.	501,443
July	40-qt.	279,904	36,909	78,159	62,870	49,469	1	507,311
June	40-qt units	236,465	41,114	83,197	71,696	40,061	1,474	474,007
Key	40-qt.	223,833	38,981	88,433	75,039	48,980	4,654	479,920
April	40-qt.	210,138	31,426	78,137	68,974	53,264	4,344	446,283
March	40-qt.	250,780	28,042	75,470	67,103	45,751	6,922	474,068
Feb.	40-qt.	233,004	34,656	60,703	59,373	34,685	6,324	428,745
Jan.	40-qt.	248,264	50,658	54,185	62,998	38,187	9,001	463,293
origin		Vt.	N.Y.	Maine	Mans.	N. H.	R.I.	Total

Compiled from reports of the Bureau of Agricultural Economics.

TABLE C

Receipts of cream at Boston and Metropolitan Area by State of origin, 1932-1937

Alabama Vermont New York Maine Massachusetta Connecticut Clanada 5,960 Indiana 237,635 24,237 24,237 27,793 1,264 17,071 26,434	228,547 23,325 52,626 1,509 19,964 200 3,950 22,563	272,806 63,808 45,365 2,202 19,949 1,400 7,731	316,489 26,586 48,326 2,248 22,148 1,000 3,800	286,740 34,013 34,013 39,031 1,949 16,060 1,380 1,50 14,250	224,754 48,032 22,976 839 4,536 14,807 780 37,356
	225,547 52,325 52,325 1,509 19,964 200 3,950 22,563	272,806 66,808 45,385 22,002 19,949 1,400 7,731 2,000	216,489 26,586 48,326 2,248 22,148 3,800 3,800	286,740 34,013 39,031 1,949 16,060 1,380 14,250	224,754 28,035 28,037 28,037 4,536 14,807 37,356
	25,525 1509 19,964 200 3,950 22,563	45,808 45,365 2,202 19,949 1,400 7,731	28,286 2,248 2,248 22,148 22,148 3,800 800	34,013 39,031 1,949 16,060 1,380 14,250	48,032 22,976 883 4,536 14,807 37,356
	52,626 19,964 200 3,950 22,563	45,365 2,202 19,949 1,400 7,731 2,000	48,326 2,248 22,148 1,000 3,800	39,031 1,949 16,060 1,380 14,250	22,976 838 4,536 14,807 17,809 37,356
	1,509 19,964 200 3,950 22,563	2,202 19,949 1,400 7,731 2,000	2,248 22,148 1,000 3,800 800	1,949 16,060 1,380 14,250	838 4,536 14,807 1780 37,356
	19,964 200 3,950 22,563 7,975	19,949 1,400 7,731 2,000	22,148 1,000 3,800 800	16,060 1,380 150 14,250	4,536 14,807 17,356 37,356
ieut	3,950 22,563 7,975	1,400 7,731 2,000	1,000 3,800 800	1,380 150 14,250	14,807 780 37,356
	3,950 22,563 7,975	1,400 7,731 2,000	3,800	1,380 150 14,250	14,807 780 37,356
	7,975	2,000	3,800	14,250	37,356
	7,975	2,000	800	14,200	37,356
	7,975	2,000	800		2,800
				2 800	2000
Kentucky 3,742					
					200
Maryland 6,640	1,700	007	. 500		
	45,302	50,915	61,981	79,112	71.515
Minnesota 230	21,882	9,299	7,410	2.280	8.933
	30,703	13,884	. 10,816	19,801	40,318
Jersey		20			
Ohio 18,399	15,435	14,160	8,000	13,566	21,090
	202	360			
pur	7.3	-	6,450		
l'ennessee	11,383	22,449	6,829	14,295	12.148
	52,162	56,335	31,527	46,479	66.852
Mississippi				200	200
Total 542,005	539,406	586,264	554,610	573,106	K79 19.6

TABLE D

FLUID CREAM: Receipts at Boston and Metropolitan Area by State of origin, by months, 1937

origin	Jan.	Feb.	March	April	May	June	July	Yng.	Sept	Oct	Nok.	Dec	Total
	40-qt.	40-qt.	40-qt.	40-qt.	40.0°	40-qt.	40-qt units	40-qt. units	40-qt.	10-qt. units	46-qt.	40-qt.	40-qt. units
Vt.	12,176	11,677	18,758	24,977	32,701	.35,569	23,986	14,278	16,780	14,880	8,699	10,273	224,754
1.4.7	8.25	5,079	7,529.	6,626	4,969	3,139	7,760	3,094	-697	325	543	46	48,032
Maine	1,986	1,296	1,515	1,707	2,321	3,501	1,515	1,315	1,811	2,380	.1,708	1,921	22,976
Mass.	. 20	. 38	84	47	. 283	63	58	. 72	. 45	33	19	35	. 83
NoH.	146	116	101	173	659	1,529	419	0000	. 253	487	304	197	4,536
II.	1	1	-1	-	380	003	-1	1	1	1	1	006	780
ind.	4,000	3,400	2,200	1,751	2,820	2,200	3,250	5,500	3,900	2,800	3,190	2,345	37,356
Kansas	1	200	. 003	1	400	400	1	400		i	. 400	008 .	2,800
La.	1	4	1	1	. [1	1	007	1	1	i	1	200
Mich.	7,265	5,220	5,932	8,400	4,975	2,600	5,420	. 7,870	4,763	3,495	8,353	7,220	71,518
Minn.	-	1	1	. 1	1	.1	. 995	2,000	1.	1	4,769	1,169	8,933
Miss.	j.	1	. 1		.]		1	i	1	1	290	1	. 200
Mo.	603	-1,006	803	.1	626	1,200	6,071	9,459	5,056	3,281	5,818	6,395	40,318
)hio	2,771	004.3	3,400	3,000	2,200	400	200	616	200	2,79	2,215	009	21,090
Penn.	820	100	100	1	100	200	1,898	3,400	1,800	1,800	1,300	009	12,148
Wis.	1,600	2,000	008	1	4,000	2,400	10,261	14,176	8,000	4,800	100'01	8,411	66,858
Canada	408	207	460	. 355	1,428	3,148	2,130	1,862	1,860	1,308	1,032	645	14,807
Total	40,050	32,739	41.942	47.003	57.832	56.549	63.963	64.827	45.570	38.314	48.493	40.854	578.136

Receipts of condensed milk (fresh) at Boston and Metropolitan Area by States of origin, by years 1932-1937

10.1	1952	1933	1934	1935	1936	1937
State	40-qt.	40-qt.	40-qt. units	40-qt. units	40-qt.	40-qt.
Vermont	23,446	15,335	10,512	15,704	32,204	32,026
New York	23,106	14,214	22,965	20,071	36,920	. 64.188
Maine	209	191	1,243	762	788	3,652
New Hampshire	6,010	12,125	13,911	13,895	23,979	8,408
Massachusetts	8	1	1		۱	1
Michigan	· !!	450	1	. 758	1,250	1,340
Ohio :	-1	1.	1	1	1	1,325
Indiana	. 1	325	1	. 1	. 1	1
Pennsylvania	1	400	. 1	. 1	1	J
Tennessee		647	1	1	. 1	1
Wisconsin	· I,	400		-1	-	1.
Total	53,171	44,087	48,631	51,187	95,121	110,939

TABLE F

CONDENSED MILE (FRESH): Receipts at Boston and Metropolitan Area by States of origin, by months, 1937

State order		Jan.	Peb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
		40-qt. unite	60-qt.	40-qt.	60-qt units	40-qt.	40-qt.	40-qt.	40-qt.	40-qt.	40-qt.	40-qt unite	40-qt.	40-qt.
Vr.	1	58	153	2,961	5,309	4,615	3,880	5,280	3,388	2,971	1,746	1112	1,454	32,026
N.Y.	14	6,959	5,977	5,004	3,752	5,150	4,275	7,444	10,002	3,718	2,819	5,125	3,963	64,188
Maine		. 1	1	1	1	9	1,201	625	343	763	202	12	1	3,652
N.H.		1	s.ì	1	i	1,766	3,576	1,107	141	119	799	1	J.	8,408
Mich.		1,000	1	1	۱.	1	7	280	1.	1	1	.1	9	1,340
Ohio		1	1	1	1	1	1	1.	200	-I	1.	825	1	1,352
Total		8,017	6,130	7,985	9,061	11,537	12,932	14,736	14,674	8,171	6,066	6,173	5,477	110,939

Compiled from reports of the Bureau of Agricultural Economics.

24. A rough approximation of the formulae for conversion of 40-quart cans or quarts into pounds or hundred-weight is as follows: A 40-quart can or jug of milk will contain 85 pounds of whole milk. One hundred pounds of milk (i.e., a hundredweight) is equivalent to 46.5 quarts. One quart contains 2.15 pounds. The amount of butterfat in milk or cream is expressed in percent. Thus, 40% cream has 40 pounds of butterfat in 100 pounds of cream and so-called "3.7 milk" has 3.7 pounds of butterfat in 100 pounds of milk. The "4% milk" equivalent of "40% cream" may be obtained by multiplying the cream volume by 10.

III. Secondary Markets

- .25. In the New England area, the Boston market is considered as the primary market. All other markets in that area are termed secondary markets. The principal secondary markets in Massachusetts are: Lawrence, Lowell, Worcester, Springfield, Fall River, and New Bedford. The principal secondary markets in Maine are: Portland and vicinity; Auburn and Lewiston, Oxford County; Bangor and vicinity; Kennebeck and Knox Counties; Bath and vicinity; and York County. The principal secondary markets in Vermont are located in the counties of Windham, Windsor, Orange, Lamoille, Washington, and Chittenden. The principal secondary markets in New Hampshire area: Keene and vicinity, Newport and vicinity, Nashua and vicinity, Lake Winnepesaukee region, White Mountain region, Manchester, Portsmouth and vicinity, and Concord and vicinity. The principal secondary market in Rhode Island is Providence.
- 26. At all times there is a certain amount of milk sold in secondary markets by handlers who operate in the Boston market. Some of the routes served by handlers operating in the Boston market supply both the Boston market and secondary markets. In addition to this there are continuous shipments of special milks and certified milk by handlers operating in the Boston market into the secondary

markets. Also some of the distributors in some of the secondary markets purchase at least part of their supply at all times from handlers who operate in the Boston market. Distributors in secondary markets tend to purchase as nearly as possible an amount of milk equal to their fluid milk sales. They depend upon the Boston market to furnish them with additional milk whenever the demand is ab-Furthermore, in the vacation periods in the summertime, e.g., the month of August, Boston dealers continue to serve certain of their customers who go outside the city for the vacation period and they also supply new customers who visit outside market areas during vacation periods. The milk which is sold in the secondary markets by Boston distributors is usually milk which is delivered to country plants which supply the Boston market. The milk, which is sold in the secondary markets, is sold at Class I prices, and the effect of these sales is to absorb a certain amount of the surplus in the Boston market at Class I prices. There is a certain amount of milk sold in secondary markets in all months throughout the year, but the volume varies substantially. These sales in secondary markets have been customary for a number of years in the past.

IV. Importance of Fluid Milk

- 27. Fluid milk is a necessary article of diet for children and is an extremely valuable article of diet for adults. Milk provides vitamins which cannot be obtained as easily from other foods.
- 28. Some indication of the extent of the consumption of fluid milk and cream in the Boston marketing area is found in the reports of the Bureau of Agricultural Economics of the Department of Agriculture of the United States which show that in 1937 a daily average of 616,200 quarts or 1,324,830 pounds of fluid milk and 63,360 quarts or 130,680 pounds of cream were brought by rail and truck into the marketing area. I take judicial notice that the population of the cities and towns constituting the greater

Boston, Massachusetts, marketing area as defined in Article I, Section 1 of Order No. 4, as amended, was 2,001,770 in 1930; 1,730,436 in 1920; and 1,460,256 in 1910.

V. Sanitary Regulations Relating to Milk

- 29. The production and distribution of milk are subject to special sanitary regulations imposed by the New England States and by the local subdivisions thereof. (See General Laws of the Commonwealth of Massachusetts, Chapter 94.) So far as these regulations apply to the production of milk they relate to the cleanliness and ventilation of stables and milk houses; the proper equipment for cooling milk and its use; the health, physical well being, and cleanliness of cows; and a number of other circumstances.
- 30. Section 40 of said Chapter 94 of the General Laws of Massachusetts provides in part as follows:

"No person, except a producer selling milk to other than consumers, or selling not more than twenty quarts per day to consumers, shall deliver, exchange expose for sale or sell or have in his custody or possession with intent so to do any milk, skimmed milk or cream in any town where an inspector of milk is appointed, without obtaining from such inspector a license which shall contain the number thereof, the name, place of business, residence, number of vehicles used by the licensee and the name of each driver or other person employed by him in carrying or selling milk. . . ."

Licenses issued under this section provided that the licensee was authorized "to sell milk according to law and the regulations" of the local municipal health authorities "if the said law and regulations are complied with." As a matter of practice certain of the municipal authorities in the greater Boston marketing area in granting such licenses to sell milk provided in them that only the milk from certain specified plants of the handler could be sold. Where reference is made herein to plants approved by health authorities, such statement means that the license issued under said section 40 permitted the handler to sell milk from the particular plants in accordance with its terms; and where reference is made to plants not approved by health authorities, the language means that such license did not permit the handler to sell milk from such plants.

V1. Importance of the Dairy Industry.

31. There are about 40,000 producers in the New England States and approximately 18,000 of them are engaged in producing milk for the Boston market. Dairying is the principal agricultural occupation in the State of Vermont. This is also true of some sections of New Hampshire, particularly in the northern part of the State. The dairy industry is likewise important in Maine, particularly in the central part of the State, although it is relatively less important in the State as a whole than in the State of Vermont. The importance of the dairy industry in the four New England States of Maine, New Hampshire, Vermont, and Massachusetts is shown by the following table showing the milk and butterfat produced in such States and the purpose for which it was used in 1934.

Milk and butterfat produced and milk used for each purpose on farms in Maine, New Hampshire, Vermont and Massachusetts, in 1934

24		Sta	ite	
Item	Maine	New Hampshire	Vermont	Massachusett
Milk cows on farms (thousands)	142	78	264	128
Estimated r. oduction per milk cow during year.			:	
Milk (pounds)	. 4,420	4,700	4,720	5,525
Butterfat (pounds)	181	183	191	210
Percentage of butterfat in milk produced (percent)	4.1	3.9	4.05	3.8
Total production on farm*: Milk (million pounds)		•		
	628	367	1,246	707
Butterfat (million pounds)	26	J 14	50	27
Disposition of milk:	/			
Used as whole milk or cream on farms where produced (million pounds)	72	28	63	51
Head dos - W Co		20		1
Used for making butter on farms (million pounds)	156	33	37	14
Whole milk fed to calves (million pounds)	13	8	⊋ 29	15
Milk skimmed or separated for sale of butterfat (million	۰			
pounds)	79	9	160	9
Retailed by producers' (million pounds)	106	44	58	135
Milk sold at wholesale' (million pounds)	202	245	899	483

¹ Preliminary, pending revisions based on the results of the 1935 census enumeration of cows milked, milk production, and farm butter production.

^{*}These estimates exclude milk sucked by calves, milk spilled or lost up to the time it is measured, skimmed, or delivered by farmers, and milk produced by cows not on farms.

Approximations based chiefly on the population in small towns and rurs! areas where most families purchase their milk supply directly from local farmers. Estimates include milk equivalent of cream.

⁴ Estimates include milk delivered to creameries, condenseries, factories, and market-milk receiving stations, but exclude market milk sold to other farmers for local retail delivery.

32. I take judicial notice of the facts shown in the following table, on page 93 compiled from the published reports of the Division of Crop and Livestock Estimates, Bureau of Agricultural Economics, which shows the percentage relationship between cash income from dairy products and cash income from all farm production in the abovenamed New England States in the years 1929 and 1935. I also take judicial notice of the facts shown in the following table, on page 95 compiled from Census Reports of the Department of Commerce, which shows the number and percent of farms reporting cows milked and percent of farms reporting 40 percent or more of their income from dairying in the above-named New England States in the year 1929.

VII. Variations in Production

33. The production of milk varies greatly at different seasons of the year. Normally production reaches the lowest point in November, begins to increase about February, and reaches the peak in June. Considering the amount of milk produced by the number of dairy cows being milked for the Boston market in November as 100, the amount of milk produced by the same number of cows in the month of June would normally be approximately 175: for the month of July, 165; for the month of August, 150; for the month of September, 140; and for October, 130. The reason for this fluctuation in production is that cows normally freshen in the spring and are fed grass which increases the flow of milk. As the pastures begin to dry up, the production of the dairy cow falls off. Occasionally there is a slight bulge. in production in October because of the fact that the cows are turned on meadow before being put in the barn. There are also day to day variations in the production of milk. An interval of extremely cold weather in the wintertime or of cold weather accompanied by rain during the summer season shrinks production. Drought, if prolonged sufficiently, will reduce production materially.

Cash income from all farm production and percentage cash income from dairy products was of eash income from all farm production in the United States and specified States which include the Boston supply area, 1929-1935

		Cash income	Cash income from all farm production	production			income f	income from farm production	oduction	recent cash income from fairy products was of total cash
ear	United States	Massachu-	Maine	New Hampshire.	Vermont	United	Massachu- setts	Maine	New Hampshire	Vermont
	1,000 dollars	1,000 dollars	1,000 dollars	1,000 dollars	1,000 dollars	Percent.	Percent	Percent	Percent	Percent
929	10,284,479	79,193	90,970	24,395	49,957	18.0	34.1	17.3	44.8	63.7
1930	7,987,606	72,934	66,289	23,442	46,381	20.5	37.0	23.7	.46.6	64.7
1931	5,795,148	58,739	39,692	18,346	33,770	22.1	37.6	31.9	45.5	67.9
1932	4,368,296	45,827	32,659	14,751	28,221	22.6	8.98	32.7	47.3	67.1
1933	5,402,094	48,948	48,034	14,942	27,583	18.3	34.6	20.6	43.1	66.0
11934	6,225,161	51,138	34,065	15,665	30,214	.18.2	37.0	.31.3	46.6	69.1
1935	7,203,416	60,113	49,095	18,508	36,928	17.9	37.7	24.2	44.1	66.8

¹ Includes benefit payments and government purchases.

² Preliminary.

Compiled from reports of the Bureau of Agricultural Economics, Division of Crop and Livestock Estimates

VIII. Variations in Demand

34. The demand for milk tends to be relatively inelastic as compared to the supply. There are, however, daily variations in the demand for fluid milk. There is always an increased demand on Saturday because of the fact that customers who buy their milk from stores must buy enough to carry them over the week end. There is also an increased demand on the days preceding holidays for the same reason. During the holiday seasons, such as Thanksgiving and Christmas, there is an increased demand for milk.

35. The weather has an important effect on daily variations in demand and a prolonged hot spell will increase the demand. In the Boston market the demand for milk normally is highest in July and August, and lowest in December. Considering the demand in the month of November again as being represented by the index figure 100, the demand in the months June to December, inclusive, would normally be represented by the following index figures: June, 99; July, 106; August, 103; September, 103; October, 103; November, 100; December, 95.

IX. Surplus Milk

36. Since there must always be an adequate supply of fluid milk to supply the demand, and since it is impossible to store fluid milk in flush periods to meet the demand when the supply is low, there must always be a surplus maintained which is in excess of the normal daily demand for milk. Also, because of the fluctuations in daily demand, it is necessary to have a sufficient surplus to meet the peak daily demand at all times in the year. This surplus, which must be carried constantly throughout the year, is sometimes called "go and come surplus" or "necessary surplus." In order to have an adequate supply in November, the period of the year when the supply available for the

Boston, Massachusetts: Number and percent of farms reporting cows milked and number and percent of farms reporting 40% or more income from dairying in the United States and from New England States of Maine, New Hampshire, Vermont and Massachusetts in 1929

State	Total number	Farms rep		Farms re 40% or mo from da	re income
	of farms	Number	Percent of total		Percent of total
Maine	39,006	30,427	.78.0	6,596	16.9
New Hampshire	14,906	11,314	75.9	4,332	29.1
Vermont	24,898	21,587	86.7	14,425	57.9
Massachusetts	25,598	17,271	67.5	7,782	30.4
United States	6,288,648	4,615,529	73.4	604,837	* 9.6

Compiled from Census reports of the Department of Commerce.

Boston market is lowest, it is necessary that there be a production of milk sufficient to furnish the fluid milk supply plus a surplus equal to 20 or 25 percent of the total supply. As has been explained above, the number of cows necessary to produce the fluid milk requirements, including a necessary surplus of 25% in November, will produce a much larger amount of milk at other seasons of the year. In the year 1937 the surplus in the Boston market was 25% for the month of November and 40 to 42% for the month of August.

37. A part of the surplus milk, that is the milk produced for fluid consumption which is not used for that purpose, is used for the manufacture of ice cream, candy, cheese, etc., but the larger part is separated into cream. Practically all of the cream which is produced from surplus milk is sold as table cream. The greater part of the skim milk which remains after the separation of the cream is manufactured into skim-milk by-products such as casein, although some of it is used for the manufacture of various

foods.

X. Classification of Milk According to its Use

38. Since 1918 some of the milk sold in the Boston market has been sold according to the classifications which were based, in some parts and at some time, upon the purposes for which the milk was used. At other times these classifications were merely bargaining devices which had no relation to the actual use to which the milk was put. The classifications generally used have been Class I and Class II, although the classifications Class IIA and IIB have also been used. The definition of each of these classes has varied from time to time. Order No. 4 as amended defines Class I milk as "all milk sold or distributed as milk, chocolate milk, or flavored milk and all milk not specifically accounted for as Class II milk" (Art. III, Sec. 1, Par. 1); and Class I milk as "Milk specifically accounted for (a) as being sold, distributed, or disposed of other than as milk,

chocolate milk, or flavored milk and (b) as actual plant shrinkage within reasonable limits" (Art. III, Sec. 1, Par. 2). Milk which was not sold under the classified plan was generally sold for a flat price usually announced in advance of the purchase.

39. Class II milk has always brought a substantially lower price in the Boston market than Class I milk. The products of Class II milk sold in the Boston market must compete with similar products of milk produced in other parts of the United States and shipped into the Boston market. Class II milk (as defined in Order No. 4 as amended) must also meet the competition of milk produced in the milkshed for use in manufacturing and not for fluid consumption. Such milk need not be produced in conformity with the strict health regulations applicable to the production of milk for fluid consumption and hence the cost of its production is less than that of the Class II milk which meets such requirements and with which it competes. In short, the price of Class II milk in the Boston market has in the past depended upon economic factors operating in the entire United States and, to a more limited extent, in the world market.

40. When a farmer delivers his milk to a receiving station qualified to ship fluid milk to the Boston market, neither he nor the handler to whom the milk is delivered knows how much of that particular milk is to be sold as Class I and how much is to be sold as Class II milk nor is the farmer ever informed as to the use which is made of the particular milk which he delivers. As to farmers delivering to such stations, no separate class of farmers in the Boston milkshed produces Class II milk. Furthermore, there are no physical or intrinsic characteristics which distinguish Class I milk from Class II milk; the classification is a pricing or bargaining device.

XI. Competitive Practices

41. The price of Class I milk has always been higher than the price of Class II milk. There has been a tendency for the farmers in the Boston milkshed to attempt to dispose of the greater part of their milk for fluid purposes. .The ratio between the amount of milk sold as Class I and the amount sold as Class II varies among the dealers. tendency has been for the farmers at any particular time to try to find a market for their milk through handlers who were successful in maintaining a relatively low percentage of surplus milk. A method by which a handler might obtain a low percentage of surplus milk has been by maintaining or increasing the amount of his Class I sales: The evidence shows that one method which dealers have adopted in the Boston market to achieve this result has been to cut retail and wholesale prices. Each dealer naturally wishes to purchase his milk as cheaply as his competitors.

42. In 1922 the fact that the chain stores were able to obtain milk at lower prices than those of the largest cooperative organization, led to a decline in price. Again in December 1926 the action of one cooperative organization in the market in selling milk to a chain store at a reduced price led to a general decline in the market which continued into July of the following year. Beginning in October 1927 the Class II price for milk delivered by members of New England Milk Producers Association was changed from a single price to two prices called the Class II-A price and the Class II-B price. For a period of from three to six months after October 1927, prices were stable but then price discounts began again and the price received by the farmers again declined.

43. There was a decline in milk prices commencing late in 1930 and continuing through the early months of 1933. In 1930 competition between producer groups resulted in price cutting and this precipitated a decline in the price to producers. Late in 1931 and early in 1932 prices again declined in the Boston market. Beginning on January 1,

1933, there was a further decline in price. Commencing January 1, 1933, New England Milk Producers Association, the largest cooperative organization in the market, sold its milk to the dealers at a monthly price under an agreement which provided for arbitration or agreement on the discounts, if any, which should be given at the end of the period. The purpose of the discounts was to meet the competition of other groups which were selling milk in the market at reduced prices. At this time there was no uniform price in the market and substantial amounts of milk were being sold at a price lower than the price announced by New England Milk Producers Association and the distributors insisted that the Association meet the competition of the lower prices. For example, New England Milk Producers Association announced a price for the month of January 1933 of six cents per quart for Class I milk delivered to Boston. At the end of the month that price was adjusted to five and one-half cents per quart to meet the competition of milk which was coming into the market at a lower price. For the months of February, March, April, and May of that year the price was reduced to five cents per quart and an additional adjustment of twenty-seven cents per hundredweight, slightly more than one-half cent per quart, was made at the end of each month. In June and July the price returned to six cents per quart but another adjustment of thirty-seven cents per hundredweight, which is approximately four-fifths of a cent per quart, was deducted at the end of the month. The price reductions granted by New England Milk Producers Association referred to above, were necessary despite the fact that at this time New England Milk Producers Association controlled sixty-odd percent of the milk supply for the Boston market and that the other producer groups whose competition New England Milk Producers Association was compelled to meet controlled only approximately thirty percent of the milk in the market.

44. At times the price decreases to the farmers referred to in paragraph 43 of this report were not accompanied

by equivalent decreases in the price to consumers. For example, in December 1932 the price to the consumer for fluid milk was eleven cents per quart and despite the adjustment made in the price to the farmer for the month of January, the consumer price remained unchanged during that month. Again, beginning in February and continuing until May, the price to the farmer which had been reduced to five cents a quart was adjusted at the end of each month by the deduction of twenty-seven cents per hundredweight, but the price to the consumer throughout this period never went below ten cents per quart. In July 1933 the price to the producer was 5.2 cents per quart, a reduction of 0.8 cents per quart from December 1932 while the price to the consumer in July was eleven cents per quart, the same price which had been in effect in December 1932. The average Class I price to producers for the years 1928 to 1930 was \$4.07 per hundredweight, or 8.8 cents per quart, and the average price to consumers for the same years was 15.3 cents per quart. In 1932 the Class I price had fallen to \$2.55 per hundredweight, or 5.5 cents per quart, a reduction of 3.3 cents per quart, while the price to consumers had dropped to 10.5 cents, a reduction of 4.8 cents per quart. These statistics are set forth in the following table:

* .	Per	Quart Price	
	1928-1930	1933	Amount of Reduction
Class I Price (To producers)	8.8	5.5	3.3
Consumer Price	15.3	10.5	4.8

45. The evidence also indicates that on three different occasions between 1916 and 1936 disputes have arisen between groups of producers and handlers in the market with respect to the marketing of milk with the result that certain groups of producers have withheld milk from certain

distributors. One of these so-called "milk strikes" occurred in 1916, another in 1921, and the third began in December 1936, and continued into 1937. As a result of the strike in 1916, milk was withdrawn from the Boston market but returned after the strike terminated. The strike in 1921 also resulted in the withdrawal of milk from the Boston market. The milk so withdrawn came from the States of Maine, New Hampshire, Vermont, New York, and, to some extent, Massachusetts. The strike in 1921, however, was directed against only one distributor although it ultimately affected other distributors. The strike in 1936 and 1937 was a strike directed against the Hood Company and the Whiting Company. As a result of that strike some handlers in the market found it necessary to obtain their supplies of fluid milk from areas in Vermont and New York which normally shipped to the New York market. There was no evidence of any violence in connection with any of these disputes, nor was there any evidence that the volume of milk moving interstate was diminished nor that the volume of milk moving into the marketing area was dimin-In December 1936 New England Dairies ordered the producers whose milk it marketed to withdraw deliveries of their milk from the Hood and Whiting Companies. This order included the milk of members of New England Milk Producers Association, then marketing through New England Dairies and at this time controlling about 60% of the Boston milk supply. The milk which was withdrawn from the Hood and Whiting Companies, New England Dairies, was unable to sell in the Boston market at the Class I price. Consequently, it was forced to utilize it largely at the Class II prices. Such utilization returned a much lower price to producers whose milk was marketed by New England Dairies than the prices which were being received at the same time by producers continuing to sell to the Hood and Whiting Companies, who enjoyed the price advantage of selling to dealers with a large percentage of Class I sales. During the first seven months of 1937, the

percentage of surplus which New England Dairies carried

was greater than the average for the market.

46. Throughout the period from 1920 to 1936, New England Milk Producers Association marketed approximately sixty percent of the milk in the Boston market. Beginning on January 1, 1937, the percentage of the market controlled by New England Milk Producers Association and the other cooperatives associated together in New England Dairies, Inc., has dropped to between 30 and 40 percent.

47. The following table shows the Class I and Class II prices for 3.7 milk delivered in the 181-200 mile zone for each month between May 1918 and August 1, 1937, and the weighted average net blended price per hundredweight for 3.7 milk in the 181-200 mile zone to members of the New England Milk Producers Association and of New England Dairies, Inc., for each month between January

1918 and August 1, 1937.

Prices Per Cwt. 3.7% Milk Boston Market 191-200 Mile Zone

Without Deduction of Dues

N.E.M.P.A.: May 1918 - June 1933

New England Dairies, Inc.: July 1933 - December 1936

1918

-				1	,	-		
	C	lass I		Class II	Con	nposite	:	Dues
May	: \$	3.07		\$ 1.51	\$	2,55	\$.01
June		2.96		1.79		2.46		.01
July		3.16	4	1.80		2.80		.01
August		3.39	*	1.84		3.10		.01
September		3.39		2.58		3.19		.01
October		3.74		2.55		3.56		.01
November		3.92		3.40	7.00	3.92	4.	.02
December .		3.91		2.87	./	3.91	¥.	.01
May - Dec.		3.44	٥.	2.29.		3.19	٠	.01

January	3.91	2.73	3.68	.01
February	3.85	2.11	3.37	.01
March	3.80	2.25	3.23	.01
April	3.68	2.44	3.15	.01
May	3.27	2.32	2.83	.01
June	3.04	2.45	2.74	.01
July	3.33	2.59	3.06	.01
August	3.56	2.87.	3,35	:01
September	3.56	2.84	3.36	,01
October	3.81	3.22	3.59	.02
November	4.04	3.43	4.04	.02
December	4.04	3.33	4.04	.02
Year	3.66	2.72	3.37	.01

Master's Report

1920

	. 1	920		
	Class I	Class II	Composite	Due
January	4.03	2.60	3.71	.01
February	4.03	2.55	3.58	.01
March	3.91	2.88	3.62	.01
April	3.83	2.71	3.45	.01
May	3.48	2.53	3.11	.01
June	3.48	2.29	2.95	.01
July	3.72	1.99	3.25	.01
August	3.95	2.11	3.56	01
September	4.10	2.45	3.55	01
October	4.10	2.27	3.57	01
November	4.10	2.55	3.54	.01
December	\$4.10	2.00	3.44	.01
Year	3.90	2.41	3.44	.01
1 ear				
		1921	2.02	0.
January	3.64	1.94	3.02	.0:
February	3.40	1.51	2.64	.0.
March	3.06	1.59	2.42	.0.
April	3.06	1.50	.2.30	.0.
May	2.94 .	-:98	1.93	.0
June	2.94	1.01	1.94	.0
July	2.94	1.31	2.36	.0
August	3.40	1.55	2.71	.0
September	3.40	1.59	2.83	0
October	3.40	1.61	2.81	.0
November	3.40	1.56	. 2.84	.0
December	3.17	1.62	2.61	.0
	3.23	1.48	2.53	.0
Year	0.20			
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		1922	242	-
January	2.50	1.36	2.12	0.
February .	2.50	1.34	2.08	.0
March	2.50	1.41	2.08	
April	2.27	1.40	1.92	.0
May	2.27	1.35	1.87	
June	2.27	1.36	1.86	0.
July	2.73	1.32	2.16).
August	2.73	1.30	2.28	0.
September	2.73	1.64	2.40	(
October	3.20	1.68	2.69),
November	3.20	1.88	2.85).
December	3.20	2.23	2.86	.(
				(

	Class	Class II	Composite	Dues
January	3.20	2.12	2.79	.01
February	3.20	2.08	2.75	.01
March	3.20	2.09	2.72	.01
April	2.73	1.94	* 2.28	.01
May S	2.73	1.72	2.20	.01
June 6	2.73	1.60	2.13	.01
July A	2.96	1.59	2.31	.01
August 6	3.20	1.91	2.68	0 .01
September	3.20	2.02	2.78	.01
October	3.20	2.08	2.82	.01
November	3.57	2.28	3.10	.01
December	3.36	2.34	2.98	
1.				.01
Year .	3.11	1.98	2.63	.01
· ·		1924	74	
January	\$20	2.33	2.86	.01
February	2!73	1.99	2.44	.01
March *	2.27	1.81	2.11	.01
April	2.04	1.44	1.80	.01
May	2.04	1.44	1.78	01
June	2.04	1.53	1.82	.01
July	2.51	1.49	2.14	.01
August	2.73	1.41	2.34 -	.01
September	3.20	1.40	2.50	.01
October	3.20	1.40	2.58	.01
November	3.20	1.55	2.68	.01
December	3,20	1.68	2.68	.01
Year				
Lear	2.70	1.62	2.31	.01
		1925		
January	3.20	1.47	2.59	.01
February	3.20	1.52	354	.01
March	2.73	1.78	2.3	.01
April .	2.73	1.71	2.28	.01
May.	2.50	1.61	2.06	.01
June	2.50	1.62	2.06	.01
July	2.96	1.64	2.33	.01
August	3.20	1.66	2.58	.01
September	3.20	1.82	2.70	.01
October	3.20	1.94	2.80	.01
November	3.20	1.93		
December	3.20		2.81	.01
		1.88	2.74	.01
Year	2.99	1.72	2.49	.01

	Class I	Cle	as II	Com	posite	Due
January	\$ 3.20	\$	1.71		2.65	.01
February	3.20		1.72		2.64	.01
March	3.20		1.62		2.52	.01
April .	3.20		1.48		2.39	.01
	3.20		1.58		2.35	.01
May June	2.73		1.55		2.06	.01
	3.20		1.52		2.36	.01
July	3.20	**	1.56		2.46	.01
August	3.20		1.69		2.57	.01
September	2.96		1.76		2.51	.01
October	3.31		1.84		2.83	.01
November		1 1	2.07		2.83	.01
December	3.32					
Year	3.16		1.67		2.51	.01
	a -	1927				1 1
January	2.97		1.89		2.56	.0.
February	2.97		2.11		2.62	.0.
March	2.97		2.07		2.59	.0
	2.97	**	2.07	* 4	2.53	.0
April	2.97	1.2	1.75		2.27	.0
May	2.93		1.60	•	2.15	.0
June	3.03		1.56		2.30	0
July	3.37		1.57		2.56	.0
August	3.59		1.75		2.80	.0
September			2.01	4.	2.88	0.0
October	3.43			•	3.02	.0
November	3.55		2.10		3.09	.0
December	3.72		2.19			,
Year .	3.21		1.89		2.61	.0
		1928		1	:	X,*
January	3.50	7	2.04	**	2.93	0.
February	3,38		2.00		2.81	.0
March	3.38		2.07		2.77	
April	2.92		1.89		2.38	0,
May	2.92		1.77		2.26).
June	2.92		1.71		2.17	.(
July	3.16		1.84		2.48)
August	3.38		2.01	/	2.79).
'September	3.38	2	2.09	* * .	2.75).
October	3.38		2.04		2.86	
November	3.38		2.21		3.14	(
December	3.38		2.21	, 1	3.04	
December	3.26		1.99		2.70	

	Class I	Class II	Composite	Due
January	\$ 3.38	\$ 2.00	\$ 3.02	.02
February	3.38	2.09	3.02	.02
March	3.38	2.04	2.92	~.02
April	3.38	1.90	2.71	02
May	3.38	1.73	2.53	.02
June	2.92	1.80	2.28	.02
July	3.38	1.75	2.56	.02
August	3.38	1.87	2.77	.02
September	. 3.38	2.01	2.84	.02
October	3.38	2.01	2.81	.02
November	3.38	1.88	2.83	.02
December	3.38	1.82	2.66	.02
Year	3.34	1.91	2.75	.02
1 . 1		1930		. *
January	3.38	1.47	2.49	.02
February	3.38	1.39	2.45	.02
March	3.38	1.45	2.43	.02
April	3.38	1.53	2.42	.02
May	3.14	1.56	2.29	.02
June	2.92	1.48	2.14	.02
July	3.10	1.50	2.36	.02
August	3.38	1.71	2.66	.02
September	3.38	1.76	2.75	.02
October	3.38	1.76	2.62	.02
November	3.15	1.59	2.46	.02
December	2.81	1.43	2.14	.02
Year	3.23	1.55	2.43	.02
	4	1931		
January	2.45	1.27	1.94	.02
February	1.99	1.27	1.72	.02
March	1.99	1.29	1.73	.02
April	2.00	1.18	1.69	.03
May	2.00	1.07	. • 1.61	.03
June ·	2.00	1.06	1.57	.03
July	1.77	1.12	1.61	.03
August	2.23	1.25	1.91	.03
September 3	2.46	1.43	2.13	.03
October	2.46	1.50	2.08	.03
November	2.00	1.38	1.83	.03
December	1.62	1.37	1.51	.03
Year	2.08			
	2.00	1.27	1.78	03

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S		1932		
	Class I	Class II	Composite	Due
January .	\$ 1,53	\$ 1.08	\$ 1.41	.03
February	1.53	1.03	1.39	.03
March	1.53	1.02	1.36	.03
April	1.53	.)91	1.34	.03
May	1.74		1.50	.03
June	1.53	.77	1.24	.03
July	1.79	.84	1.60	.03
August	2.00	91	1.83	.03
September	2.05	.94	1.71	.03
October	2:05	.93	1.71	03
November	2.05	1.05	1.83	03
December	2.05	1.09	1.63	.03
Year	1.78	.95	1.56	.03
1 ear	1.10	1933		
-	* * 00	,78	1.49	.03
January	1.80		1.16	.0
February	1.31	.73.	1.15	.0
March	1.31		1.16	.0.
April	1.31	.83		.0
May	1.35	.91	1.18	.0
June	1.70	1.04	1.40	
July	1.70	1.12	1.50	.0
August	2.07	1.31	1.82	.0
September	2.15	1.02 °	1.70	.1
October.	2.15	.88	1.60	.1
November	2.29	1.09	1.91	1
December	2.29	.92	1.85	1
Year	1.79	.95	1.49	0
Teat .		1934 :	****	
January	2.29	91	1.85	.1
February	2.29	1.25	1.95	.1
March	2.16		1.72	1
April	2.37	1.07	1.80	.1
	2.36		1.64]
May	2.34	1.07	1.62	1
June	2.34		1.79	
July	2.34		1.90	
August	2.34		1.88	.1
September	2.65		2.01	
October			2.18	
November	2.65		2.20	.1
December	2,65		1.88	- 1
Year	2.40	1.14	1.00	1.4

	/ .	1935		
	Class I ,	Class II	Composite	Due
January	\$ 2.65	\$ 1.48	\$ 2.21	.10
February	2.69	1.68	2.34	. 10
March	2.88	1.60	2.27	.10
April	2.88	1.62	2.16	10
May	2.88 -	1.28	1.89	.10
June -	2.88	1.07	1.67	.10
July	2.58	1.05	1.67	.10
August	2.30.	1.05	1.61	.10
September	. 2.30	1.03	1.65	.10
October	2.30	1.16	1.72	.10
November	2.30	1.53	1.98	.10
December	2.30	1.56	2.03	.10
Year	2.58	1.34	1.93	.10
		1936		
lanuary	2.30	1.47	1.94	*.10
February	2.61	1.58	2.12	.10
March	. 2.73	1.48	2.00	10
April	2.73	1.38	1.90	10
May :	2.73	1.23	1.70	.10
June	2.73	1.20	1.64	:10
July	2.73	1.65	2.10	.10
August	2.25	1.87	2.07	.10
September	2.25	1.87	2.07	.10
October	2.25	1.62	1.97	.10
November	2.25	. 1.67	2.06	.10
December	2.25	1.72	1.87	.10
Year .	2.48	1.56	1.95	.10
		1/937		
January			1.65	.10
February	. [1.65	.10
March			1.62	.10
April			1.50	.10
May			1.42	.10
June			1.40	.10
July			1.60	.10

48. It is agreed by the parties that the price trends in the Boston market have followed price trends in other milk markets throughout the United States.

XII. The History of Dairying in New England

49. The evidence shows that there has been a marked change in farming practices in the New England States during the past fifty years. Before 1890 farming was largely of the diversified type, consisting of cultivation of small grains and raising livestock. However, the principal type of farming at that time was dairy farming. For the most part, the dairy farming then consisted of buttermaking on the farm.

New England area continued to be the production of milk for cream or for butter purposes, but marketing methods had changed. The milk was delivered as whole milk to a local creamery where it was separated and the butterfat marketed as cream or butter. The skim milk was received buck from the creamery after separation and returned to

the farm for feed.

51. About 1910, hand separators became common in the New England area and farmers began separating their cream at the farm and delivering the cream to the local creameries, keeping the skim milk at the farm for feed. About the same time farmers were discontinuing raising small grains and were beginning to raise mostly hay and corn for ensilage. This type of farming continued up until about 1920.

.52. About 1920, the farmers in some portions of the milkshed began shifting to the production of milk for the fluid milk market. Among the factors involved in this change were the attractiveness of the price for fluid milk and the building of better roads through rural areas. However, starting about 1920, or a little before, a number of the cooperative creameries operating throughout Vermont and neighboring areas enlarged their plants and commenced

receiving whole milk for shipment to the Boston market. The cause of this was the fact that the immediate cash return was greater from shipping whole milk ton from selling cream.

- 53. The change among the farmers of V mont to the production of fluid milk in the years since 1914 is illustrated by the table on page 113 which shows the percentage of milk shipped as fluid milk from livensed dairy plants in the State of Vermont in each year between 1914 and 1935.

- 54. At the present time the principal form of agriculture in Vermont and neighboring areas is the production of milk for sale as whole milk. A considerable amount of the land in Vermont that was once under cultivation is used for pasture or has been allowed to go to undergrowth. bit of small grain is raised in northwestern Vermont around the Lake Champlain region. In other sections the better land is devoted to raising hay and dairy cattle. Most of the concentrated feeds which are fed to the dairy cattle now, such as the small grains, are purchased on the market. The profitableness of dairy farming in Vermont is now largely dependent upon the price that can be obtained for milk. (The facts with respect to butter plants, so far as they are material, are shown in the table which is appended as Exhibit 1 together with the explanatory letter, which is marked Exhibit 1a.)
- 55. With the change over from cream production to the production of failk for fluid purposes, considerable expenditures were required on the part of farmers to meet health regulations governing the production of milk which was to be sold for fluid purposes. In order to meet these health requirements a farmer must install cooling equipment. The operation of this cooling equipment involves additional expense for electric current if the farmer uses mechanical refrigeration or for ice if he does not use mechanical refrigeration. Additional expense is also imposed by reason of the fact that the stables must be cleaned out more frequently and that the farmer must use small top, seamless milk pails.

The evidence discloses that due to the cost of complying with health regulations it costs from 35 to 50 cents per hundred-weight more to produce milk for fluid purposes than it does to produce milk for manufacturing purposes or for cream. The evidence also indicates that as a result of the changes which occurred in the health regulations applicable to the production of milk for fluid purposes, the additional cost per hundredweight in 1933 of producing milk for fluid consumption was at least 50 cents per hundredweight over what it was in the period from 1910 to 1914.

XIII. Distributing Agencies

A. Cooperative Associations

56. The handlers operating in the Boston market include both cooperative organizations of producers and proprietary dealers. The cooperative organizations of producers include bargaining cooperatives whose primary function is to bargain on behalf of their members with the distributors as to the sale price of milk. New England Milk Producers Association is this type of cooperative. There are also cooperative organizations which not only bargain with distributors as to the sale of the milk delivered by members but which also own and operate facilities for the handling and processing of milk. Some of these cooperative organizations such as New England Dairies, Inc. engage in no distribution activities but sell all the milk of their members to proprietary dealers who sell and distribute the milk in the marketing area. Others sell both to distributors and also at wholesale to stores which in turn sell the milk in the marketing area.

57. There are also cooperative organizations, such as Milton Cooperative, which receive, process, and bottle the milk of their producers and distribute it in the marketing area through owned or controlled organizations. One cooperative organization operating in the milkshed, Bellows Falls Cooperative Creamery Company, bottles some of the milk and cream of its members and sells all of such milk

Percentage distribution of total milk and cream receipts in Vermont licensed dairy, plants

						Made into condensed		•	Fluid	Made into
		Fluid milk		Made	Made into Cheddar		Shipped as sweet	Made into	eream sold	cream and
ear		shipped		butter	cheese	milk	eream	and mix	locally	ерееве
1914		19.4		57.3	2.9	1	20.4	.	1	1
915		19.1		56.1	2.9	1	21.8		-	
916	1	19.4		46.1	2.9	1	26.1	1	1	1
917		23.5		37.2	3.3	8.0	28.0	1	-	1
918		26.6		. 36.0	. 2.6	5.8	26.0		ľ	-1
919		28.3	4	33.3	4.6	9.7	24.1	1	1	1
920		27.6		34.8	4.4	5.1	28.1	-	-1	1
921		25.6	•	36.2	3.1	4.0	31.1	1		-
922		30.3	. 4	32.1	2.0	1.7	33.9	1	1	٠
923		33.1		27.6	1.0	33.33	. 33.9		!	1
924		34.8		26.0	1.5	2.5	35.2	1	-	1
925		41.0		20.5	1.2	3.3	34.0	1	1	1
956		40.37		14.76	1.35	3.49	38.03	2.00	.	. 1
927	,	45.19		14.26	.92	1.53	36.89	1.21	-	1
.826		46.04		12.64	1.10	2.15	35.33	1.81	18.	90.
. 656		51.91		10.17	17.	1:33	33.92	1.37	.55.	.04
930		45.42		8.84	95	87	41.48	96.	86.	.50
931		50.28		7.17	.51	1.01	39.44	.63	.84	.12
932		51.20		5.83	.30	.19	40.94	73	99.	.15
933		47.88		5.09	92.	.27	45.07		.57	.15
934		46.77		4.23	.31	!	47.18	.22	1.11	133
935		44 48		5 28	73	60	A: 80	ox F	1 27	0.4

and cream through a single distributing outlet in the Boston market, i. e., First National Stores.

58. The cooperative, New England Dairies, Inc., acts as the sales agent for a number of independent cooperative organizations including New England Milk Producers Association. In addition New England Dairies operates certain plants which it owns or leases and also acts as sales agent for other plants. New England Dairies, Inc. has some individual farmers as members, such members being known as direct members. New England Dairies, Inc. is the bargaining agent for the members of New England Milk Producers Association who are delivering to proprietary handlers in the market. There are at the present time twelve cooperative organizations that are members of New England Dairies, Inc. On January 1, 1936, New England Dairies, Inc. controlled approximately 75% of the total milk coming into the greater Boston marketing area. Between that date and the first of January, 1938, the percentage of milk controlled by New England Dairies, Inc. has decreased to 30 or 40%.

59. During the period from May 1, 1937, throughout the remainder of the year 1937, all milk received by New England Dairies, Inc. from producers was received from persons with whom New England Dairies, Inc. had contracts in one or another of the forms annexed hereto and marked Exhibits 2, 2a, 2b, 2c and 2d. All other milk marketed by New England Dairies, Inc. was sold by it as sales agent for other cooperative associations with whom New England Dairies, Inc. had contracts in substantially the same form as the one annexed hereto and marked Exhibit 3. During the calendar year 1937, all milk marketed by New England Dairies. Inc. for members of New England Milk Producers Association in the Boston market was received from producers with whom either New England Milk Producers Association alone or New England Milk Producers Association in conjunction with New England Dairies, Inc. had contracts in one or another of the forms annexed hereto and marked Exhibits 4, 4a, 4b, 4c and 4d. The Articles of Incorporation of New England Dairies, Inc. and its by-laws are appended to this report as Exhibit 5. The Articles of Incorporation of , New England Milk Producers Association and its by-laws are appended to this report as Exhibit 6.

60. The United Farmers Cooperative Creamery Association, a cooperative association in the Boston milkshed, physically operates country receiving stations at Randolph, Trov. Greensboro, Morrisville, and East Berkshire, Vermont. It engages in distribution of the product of its members in the marketing area by selling not only at wholesale to persons, firms, and corporations who resell such milk, but also at retail to consumers. The persons, firms, and corporations who resell in the greater Boston marketing area the milk purchased from United Farmers do so in competition with the defendants. In its direct sales to consumers, United Farmers also competes with all the defendants. The Bellows Falls Cooperative Association sells the product of its member producers in the marketing area to the First National Stores, a retail distributing concern selling milk at stores both in Massachusetts and in other states. This concern is the exclusive outlet of the Bellows Falls Cooperative in the Boston area for that portion of its milk or cream which it has bottled. The First National Stores resell this milk and cream in the greater Boston marketing area in competition with the defendants. The Milton Cooperative Dairy Corporation distributes the milk of its members in the marketing area in part through a distributor whose business the cooperative controls. The Caledonia County Cooperative Creamery is a cooperative association of producers in the Boston milkshed. It sells milk or cream to Morgan Brothers, a Massachusetts corporation having places of business in the marketing area. Morgan Brothers resell this milk and cream in competition in the greater Boston marketing area with the defendants. In each delivery period between July 1, 1937, and December 31, 1937, New England Dairies, Inc. has sold milk and cream in the greater Boston marketing area in competition with the defendants in the instant cases.

61. The table on page 117 shows for New England Dairies, Inc., Milton Cooperative Dairy Corporation, and United Farmers Cooperative Creamery Association, Inc. the number of pounds of milk reported to the Market Administrator as sold for Class I purposes and the number of pounds reported as sold for Class II purposes by each cooperative in each delivery period between August 1 and December 31, 1937.

New England Dairies, Inc. receipts of milk as reported to the Market Administrator in the periods above referred to and included by him in the computation of the blended price include the milk received from its individual producer members as well as the milk which it markets for other cooperative associations as described in Paragraphs 59 and 73.

B. Proprietary Handlers

62. The proprietary handlers operating in the market, i. e., those which are not cooperative associations, are organizations which are owned either by individuals or by corporations. Some of the proprietary organizations are country creameries which make a business of receiving milk from producers and reselling it to distributors in the city. The functions of such creameries are to receive, weigh, sample, test, jug, and ship the milk. This was a form of operation which was more common prior to 1933 than it is at the present time. A more common form of operation is for the handler who distributes milk at retail in the city to operate a receiving station in the country where milk is received from producers.

63. The evidence shows that the proprietary dealers in the Boston market fall into fairly well defined categories. From the point of view of the volume of their operations the dealers may be classified as follows: (1) The large handlers who require at least 10,000 quarts or a carload of fluid milk per day for sales purposes; (2) small dealers whose sales requirements for fluid milk amount to less than one thousand quarts per day; and (3) the medium sized

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77 Net Class I Net Class II Net II Net II	·y	New Eng	New England Dairies	Milto	Milton Co-op.	United	United Farmers
1-15 2,867,103 6,421,757 954,563 1,698,667 1,938,988 2 6-31 2,769,965 6,901,550 1,056,169 1,742,089 2,106,385 2 1-15 2,093,722 7,247,943 859,803 1,756,089 1,853,398 2 6-30 1,886,484 7,367,918 816,933 1,748,367 1,670,569 2 1-15 1,845,599 7,124,457 887,021 1,713,315 1,775,168 2 6-31 2,644,812 5,706,267 1,189,044 1,027,837 2,100,592 1 1-15 3,903,656 2,947,324 1,120,041 550,934 1,625,438 1 6-30 4,069,537 2,618,979 1,026,700 832,846 1,727,841 1 6-31 3,112,532 4,598,002 1,026,700 832,846 1,727,841 1 28,555,786 54,448,690 10,093,799 12,145,269 18,311,869 18	1937	Nèt Class I	Net Class II	Net Class I	. Net Class II	Net Class I	Net Class II
16-31 2,769,965 6,901,550 1,056,169 1,742,089 2,105,385 1-15 2,093,722 7,247,943 859,803 1,756,089 1,853,398 2 16-30 1,886,484 7,367,918 816,933 1,748,367 1,670,569 2 1-15 1,845,599 7,124,457 887,021 1,513,315 1,795,168 2 16-31 2,644,812 5,706,267 1,189,044 1,027,837 2,100,592 1 1-15 3,903,656 2,947,324 1,120,041 550,934 1,625,438 16-30 4,069,537 2,618,979 1,120,041 550,934 1,625,438 16-31 3,362,376 3,514,493 1,030,188 660,497 1,625,438 16-31 3,112,532 4,598,002 1,026,700 832,846 1,727,841 1a1 28,555,786 54,448,690 10,093,799 12,145,269 18,311,869 18		2,867,103	6,421,757	954,563	1,698,667	1,938,988	2,593,699
1.15 2,093,722 7,247,943 859,803 1,756,089 1,853,398 2 16-30 1,886,484 7,367,918 816,933 1,748,367 1,670,569 2 1-15 1,845,599 7,124,457 887,021 1,513,315 1,795,168 2 16-31 2,644,812 5,706,267 1,189,044 1,027,837 2,100,592 2 1-15 3,903,656 2,947,324 1,153,337 614,628 1,854,733 1 16-30 4,069,537 2,618,979 1,120,041 550,934 1,625,438 1 1-15 3,362,376 3,514,493 1,026,700 832,846 1,727,841 1 16-31 3,112,532 4,598,002 1,026,700 832,846 1,727,841 1 1al 28,555,786 54,448,690 10,093,799 12,145,269 18,311,869 18	16-31	2,769,965	6,901,550	1,056,169	1,742,089	2,106,385	2,534,271
16-30 1,886,484 7,367,918 816,933 1,748,367 1,670,569 2 1-15 1,845,599 7,124,457 887,021 1,513,315 1,795,168 2 16-31 2,644,812 5,706,267 1,189,044 1,027,837 2,100,592 2 16-30 4,069,537 2,618,979 1,120,041 550,934 1,625,438 1 16-31 3,362,376 3,514,493 1,026,700 832,846 1,638,757 1 16-31 3,112,532 4,598,002 1,026,700 832,846 1,727,841 1 16-31 28,555,786 54,448,690 10,093,799 12,145,269 18,311,869 18		2,093,722	7,247,943	859,803	1,756,089	1,853,398	2,518,121
1-15 1,845,599 7,124,457 887,021 1,513,315 1,795,168 2 16-31 2,644,812 5,706,267 1,189,044 1,027,837 2,100,592 1 1-15 3,903,656 2,947,324 1,153,337 614,628 1,854,733 1 16-30 4,069,537 2,618,979 1,120,041 550,934 1,625,438 1 1-15 3,362,376 3,514,493 1,030,188 660,497 1,638,757 1 16-31 3,112,532 4,598,002 1,026,700 832,846 1,727,841 1 otal 28,555,786 54,448,690 10,093,799 12,145,269 18,311,869 18	16-30	1,886,484	7,367,918	816,933	1,748,367	1,670,569	2,699,958
16-31 2,644,812 5,706,267 1,189,044 1,027,837 2,100,592 1-15 3,903,656 2,947,324 1,153,337 614,628 1,854,733 16-30 4,069,537 2,618,979 1,120,041 550,934 1,625,438 1-15 3,362,376 3,514,493 1,030,188 660,497 1,638,757 16-31 3,112,532 4,598,002 1,026,700 832,846 1,727,841 otal 28,555,786 54,448,690 10,093,799 12,145,269 18,311,869 18		1,845,599	7,124,457	887,021	1,513,315	1,795,168	2,484,741
1-15 3.903,656 2,947,324 1,153,337 614,628 1,854,733 16-30 4,069,537 2,618,979 1,120,041 550,934 1,625,438 1-15 3,362,376 3,514,493 1,030,188 660,497 1,638,757 16-31 3,112,532 4,598,002 1,026,700 832,846 1,727,841 otal 28,555,786 54,448,690 10,093,799 12,145,269 18,311,869 18	16-31	2,644,812	5,706,267	1,189,044	1,027,837	2,100,592	1,757,002
16-30 4,069,537 2,618,979 1,120,041 550,934 1,625,438 1-15 3,362,376 3,514,493 1,030,188 660,497 1,638,757 16-31 3,112,532 4,598,002 1,026,700 832,846 1,727,841 otal 28,555,786 54,448,690 10,093,799 12,145,269 18,311,869 18		3,903,656	2,947,324	1,153,337	614,628	1,854,733	1,124,487
1-15 3,362,376 3,514,493 1,030,188 660,497 1,638,757 16-31 3,112,532 4,598,002 1,026,700 832,846 1,727,841 otal 28,555,786 54,448,690 • 10,093,799 12,145,269 18,311,869	16-30	4,069,537	2,618,979	1,120,041	550,934	1,625,438	1,189,089
6-31 3,112,532 4,598,002 1,026,700 832,846 1,727,841 28,555,786 54,448,690 10,093,799 12,145,269 18,311,869		3,362,376	3,514,493	1,030,188	660,497	1,638,757	1,200,367
28,555,786 54,448,690 10,093,799 12,145,269 18,311,869	16-31	3,112,532	4,598,002	1,026,700	832,846	1,727,841	1,325,916
	Total	28,555,786	54,448,690	10,093,799	12,145,269	18,311,869	19,427,651

dealers whose requirements fall between the two limits indicated above. The Hood Company (including the operations of the Noble Company) and the Whiting Company are much larger than any of the other proprietary dealers operating in the market. For example, in the delivery period August 1-15, these two handlers controlled approximately 50 per cent of the Class I sales in the market and approximately 33 per cent of the total sales in the market. Certain of the proprietary dealers operate only in the Boston market and certain others sell both in the Boston market and in the secondary markets. The dealers may also be grouped according to the volume of Class II milk which they normally handle. Among the proprietary dealers the two largest dealers have the largest volume of Class II purchases. Some proprietary dealers receive all or the larger portion of their milk from producers; others buy all or the greater part of their milk from other handlers; some smaller dealers obtain all of their milk from their own farm production.

XIV. Country Receiving Stations

land Milk Producers Association and most of the large proprietary handlers operate country receiving stations. At these receiving stations the milk received from producers is weighed, tested, cooled, and prepared for shipment to market. At stations which handle only fluid milk the milk is received, weighed, tested, cooled, and put in a tank car or some other container for shipment to the market without undergoing further processing of any kind. At some of the country receiving stations there is also equipment for manufacturing operations.

65. A station equipped for handling Class II milk necessarily represents a larger capital investment than a station of the same volume equipped merely to receive and handle fluid milk. Furthermore, there are certain operating costs incident to the operation of a station which handles Class II

milk which are not incurred in handling Class I milk. At stations which are equipped to handle Class II milk, that milk after it is weighed, if it is to be manufactured into cream, must be heated, run through a separator, and the cream then pasteurized, cooled, and jugged. The skim milk which is a by-product of the manufactured cream may be used in various ways. At some plants it is piped into a drier and manufactured into skim milk powder by removing the moisture. Some of the skim milk may be used as buttermilk. Skim milk may also be made into condensed skim milk which is done by heating it to remove the excess water. Condensed skim milk is used primarily in the manufacture of ice cream, candy, and pastries.

66. The evidence shows that the expense of handling milk for Class II purposes is greater than the expense of handling Class I milk. On the other hand, the evidence indicates that in many cases Class II milk is handled in larger volumes than Class I milk and that up to a certain point the greater the volume of Class II milk handled, the lower the unit cost. There appears to be a point, however, after which increased volume does not lead to decreased unit cost. The volume of Class II milk necessary for the operation of plants in sufficient volume to produce the lowest unit cost requires that milk shall be obtained from a wide area, either by trucking directly from the farms over such large area, or by trucking from the farms to intermediate receiving stations, from which it is again trucked to the concentration point. In order to operate a receiving station handling Class I milk as its major product, at a cost of 20 cents per hundred weight, it is necessary to have a volume of at least 250 forty-quart jugs of milk per day.

XV. History of Cooperative Movement

67. For a number of years cooperative organizations have been an important factor in the New England milk-shed. The earliest cooperative organizations were operating cooperatives as distinguished from bargaining cooperatives.

A distinctive feature of the operating cooperative is that it owns or has the use of the physical assets which are used in the handling of the milk. A purely bargaining cooperative does not own such facilities but performs the primary function of entering into agreements with respect to the sale of the milk of its members to proprietary handlers without ever

taking physical possession of the milk,

68. In 1890 there was a number of small cooperatives scattered through New England which were of the operating type. These were generally known as cooperative creameries. They were organized by farmers who erected the buildings and established the business. In such creameries the milk was separated, the cream made into butter, and the skim milk and buttermilk taken back to the farms for feed. The condition of the roads and the character of the transportation at that time necessarily limited such organizations to a small size.

69. As early as 1885 there existed a bargaining type of cooperative organization of producers shipping to the Boston market. The members of this cooperative were located in an area extending a little into southern New Hampshire, out as far as Amherst in Massachusetts, and up as far as Berwick in southwestern Maine. The cooperative was an organization of farmers who were trying to find a uniform

way of selling milk in Boston.

70. After certain difficulties in 1911 a group of former leaders in cooperative organizations set about to build up an association of farmers in Maine, New Hampshire, Vermont, and Massachusetts who were selling milk for the Boston market. This organization was incorporated in 1917 as New England Milk Producers. Association—sometimes called NEMPA. From about 1921 up to about 1936 New England Milk Producers Association had approximately twenty thousand members. On January 1, 1938, New England Milk Producers Association had approximately ten to twelve thousand members. The milk produced by members of New England Milk Producers Association was marketed in Boston and some secondary markets. From 1920

to 1937 New England Milk Producers Association controlled approximately sixty percent of the total milk sold in the Boston Market.

- 71. Simultaneously with the organization of New England Milk Producers Association in 1917, other cooperatives which had been operating as creameries began handling fluid milk and offering that milk for sale in the Boston market. During the period between 1918 and 1921 several cooperatives were organized and built plants primarily for the purpose of handling fluid milk. These new cooperatives carried on membership drives among the farmers in the New England area. There was also competition among the various cooperatives in attempting to secure a market for their fluid milk.
- 72. In May 1932 New England Dairies was organized to act as the sales agency for the sale of milk for various of these cooperative organizations. The plan contemplated that New England Dairies would be the central sales agency for all producers selling milk in the market and that this central agency would operate a market-wide pool. The factors leading to the organization of New England Dairies were the decline taking place in milk prices, the lack of a uniform price system in the market, and the lack of any method by which fluid-milk sales in the market could be distributed among the groups of producers selling milk in the market. This plan was never put into operation.

73. In 1933 New England Dairies changed its name to Consolidated Dairies. Of the various cooperatives selling in the Boston market, Clyde Valley Creamery, Granite City Cooperative Creamery, St. Albans Cooperative Creamery, Bethel Cooperative Creamery, and Tunbridge associated themselves with New England Milk Producers Association and became members of Consolidated Dairies in 1933. Consolidated Dairies subsequently changed its name to New England Dairies, Inc. From August 1, 1937, to December 31, 1937, and for some time prior thereto the following cooperatives were associated together as member cooperatives of New England Dairies, Inc.: Bethel Cooperative Cream-

ery, Inc.; Burlington Cooperative Creamery Association, Inc.; Clyde Valley Cooperative Creamery Company, Inc.; Grand Isle County Cooperative Creamery Association, Inc.; Granite City Cooperative Creamery Association, Inc.; Mt. Mansfield Cooperative Creamery and Grain Association; Richmond Cooperative Association, Inc.; St. Albans Cooperative Creamery, Inc.; Shelburne Cooperative Creamery Company; Tunbridge Cooperative Creamery, Inc.; White River Valley Cooperative Creamery Association; and New England Milk Producers Association. New England Dairies, Inc. has 565 individual producer members.

XVI. Description of Various Marketing Devices

A. The Use Price Plan

74. The use price plan for purchasing milk is a plan under which the price paid by the handler for milk purchased by him from a farmer or an association of producers is determined by the uses to which the milk is ultimately put. Normally the handler pays for the milk on the basis of one price for the milk used for fluid purposes and a different price for the milk used for other purposes. When a farmer delivers his milk to a handler in the form of whole milk he does not deliver Class I or Class II milk as such. Because the milk of a particular producer is commingled with the milk of many other producers, the handler does not know to what use the milk of the particular producer is ultimately put. Some kind of an equalization or pooling device is therefore an essential part of any use price plan for purchasing milk, except when a handler is purchasing only for a single use.

B. Equalization Devices

75. One such equalization device is the so-called "dealer pool." In a dealer pool the dealer pays to the producer a price per hundredweight, sometimes called the "blended" or "composite" price. This price is obtained in the following manner: The total number of units sold by such dealer for Class I purposes is multiplied by the Class I price. The

total number of units sold at Class II prices or utilized for Class II purposes is multiplied by the Class II price. These two results are added together and the sum is divided by the total number of units of milk. The resulting quotient is the blended or composite price. It is assumed in this illustration that there are no bases involved in the marketing arrangements.

76. A market-wide pool is an equalization device under which the individual producer is paid for the milk which he sells in accordance with the use made of all the milk sold in the market rather than the use made of the individual producer's milk or the use made of all the milk of the particular dealer to whom the producer delivered. Thus, the blended price or composite price is computed in the case of a marketwide equalization pool by multiplying the amount of all the milk in the market disposed of for Class I purposes by the Class I price and the amount of all the milk disposed of in the market for Class II purposes by the Class II price and dividing the sum of the two resulting figures by the total amount of milk disposed of in the market. The method of computing a blended price in a market-wide equalization pool is illustrated by Findings 124 to 139 infra describing the computation of the blended price under Order No. 4 as amended. In this illustration it is assumed that no bases are in effect.

C. The Flat Price Plan

77. A flat price plan for the purchase of milk is a plan under which a fixed price is paid by the handler to the producers without reference to the use which is actually made of the milk. Normally the flat price is announced in advance of the sale.

XVII. History of Certain Marketing Plans and Practices in the Boston Market

78. From 1909 to 1914, milk was purchased in the Boston market on the flat price plan. The same kind of price plan

prevailed in the market in 1915 and 1916. During 1918 and a part of 1919 the Boston market was under regulation by the Federal Milk Commission. From January 1, 1918, to April 30, 1918, the milk prices were fixed on a flat price basis. The price was announced by the Federal Milk Commission on a per quart f.o.b. Boston basis.

79. The use price plan of purchasing milk was first introduced on an extensive scale in the Boston market beginning May 1, 1918, under a plan promulgated by the Federal Milk Commission which provided during a portion of the time that the plan was in operation for the payment for milk on the basis of one price for the milk sold as fluid milk and an accounting for the proceeds less cost of manufacture for the milk disposed of otherwise than as fluid milk. During two months of the time that the so-called Federal Milk Commission plan was in operation, a flat price was paid for all

milk purchased.

80. On March 31, 1919, the Federal Milk Commission went out of existence but the marketing plan which had been followed under its aegis was continued on a voluntary basis by a varying number of distributors and producer organizations. New England Milk Producers Association negotiated with the dealers to whom they sold their milk for a price to be paid for Class I milk and a price to be paid for surplus milk. The prices were fixed on a month-to-month basis. The distributors made reports to an administrator, who used the reports to obtain information as to the purchases and sales, from which he computed a blended price to be paid the producers by each handler on the basis of individual dealer pools. The reports made by the handlers to the Administrator were supposed to show the total amount of milk purchased, the total amount of fluid Class I sales, and, for a time, the particular uses to which the surplus milk was put. For a time distributors handling the major portion of the milk in the market continued to purchase milk under this plan but as time went on, many of the distributors gradually discontinued reporting to the administrator and began purchasing milk on the basis of the blended prices offered by

the distributors who did report and comply with the marketing plan. This general marketing plan continued with variations and deviations until September, 1932 and was in effect at subsequent times until July 1, 1933. Throughout most of this time Dr. A. W. Gilbert was the Administrator to whom the reports were made and who had general supervision of the plan.

81. This marketing plan and its variations involved the use of dealer pools. Some dealers purchasing milk from New England Milk Producers Association accounted to the members on the basis of the particular use which the particular dealer made of all the milk he bought, not only from members of New England Milk Producers Association but also from other farmers. Such dealers also accounted to producers who were not members of New England Milk Producers Association on the basis of the use he made of all the milk he purchased including the milk he received from New England Milk Producers Association.

82. Throughout the period from the discontinuance of the Federal Milk Commission in 1919 up until 1932, class prices for milk were established by negotiation between New England Milk Producers Association and the various distributors handling the milk of New England Milk Producers Association members in the Boston market. In bargaining for the class prices to be paid, New England Milk Producers Association and the dealers to whom they sold negotiated a fixed price to be paid per hundredweight for Class I milk and negotiated a formula which determined the price to be paid for Class II milk. Beginning in October 1927, the Class II price for milk delivered by members of New England Milk Producers Association was divided into Class II A and Class II B, each of which was a negotiated price formula.

83. Throughout the period between May 1, 1918, and November 3, 1933, the Class II price paid for milk delivered by members of New England Milk Producers Association was based on a formula negotiated by that organization and New England Dairies, Inc. with the dealers to whom such milk

Period

was delivered. The following table shows the different formulae used in this period. The formulae shown for the period between November 3, 1933, and February 8, 1936, are formulae prescribed in federal licenses except for the formula used for the first fifteen days in March 1934 which was a negotiated formula.

Basis of Computation of the Price per Hundredweight of Class II Milk May 1, 1918, to February 8, 1936

Basis

May 1, 1918— November 30, 1921	Value of products manufactured from surplus less cost of manufacture.
December 1, 1921— August 31, 1922	(Average butter market price minus \$.05) plus 16-2/3% times 3.7.
September 1, 1922— September 30, 1922	(Average butter market price minus \$.05) plus 16-2/3% times 3.7 plus \$.15.
October 1, 1922— November 30, 1922	(Average butter market price minus \$.05) plus 16-2/3% times 3.7.
December 1, 1922— July 31, 1923	(Average butter market price minus \$.05) plus 16-2/3% times 3.7 plus \$.15.
August 1, 1923— January 31, 1924	(Average butter market price minus \$.05) plus 16-2/3% plus \$.03-1/2 times 3.7 plus \$.15.
February 1, 1924 January 31, 1927	(Average butter market price minus \$.05) plus 16-2/3% times 3.7.
February 1, 1927— May 31, 1927	(Average butter market price minus \$.05) plus 16-2/3% times 3.7 plus \$.10.
June 1, 1927— September 30, 1927	(Average butter market price minus \$.05) plus 16-2/3% times 3.7.
October 1, 1927—- July 31, 1933	Class II divided arbitrarily between Class II A and Class II B.

The "average butter market price" used was a per pound price. During part of the period covered by this table the price was obtained from quotations issued by the Boston Chamber of Commerce and during the remainder of the period the prices were taken from reports issued by the Bureau of Agricultural Economics.

^{••} This whole formula yields what is known as the "butter value."

	Percent of Class II called Class II A and paid for at: Average butter market price plus 20% times 3.7	Percent of Class II called Class II B and paid for at: Average butter market price minus \$.05 plus 16 2/3% times 3.7
Qctober 1, 1927—		
December 31, 1927	100	0
January 1, 1928 – January 31, 1 28	60	40
February 1, 1928— February 28, 1928	75	25
March 1, 1928— March 31, 1928	60.	40
April 1, 1928— April 30, 1928	50 •	50
May 1, 1928— May 31, 1928	15	85
June 1, 1928— July 15, 1928	10	90
July 16, 1928— October 31, 1928	75 .	25
November 1, 1928— December 31, 1928	100	. 0
January 1, 1929— March 31, 1929	60	40
April 1, 1929— April 30, 1929	- 60	50
May 1, 1929— May 31, 1929	25	75
June 1, 1929— July 31, 1929	50	50
August 1, 1929— September 15, 1929	75	25
September 16, 1929— December 31, 1929	100	0

January 1, 1930— January 16, 1930	50 50
January 16, 1930— March 31, 1930	20 80
April 1, 1930— May 15, 1930	All Class II paid for at the price of \$1.55
May 16, 1930— June 30, 1930	All Class II paid for at the price of \$1.50
July 1, 1930— August 10, 1930	75 25
August 11, 1930— December 31, 1932	100
January 1, 1933— May 28, 1933	50 50
May 29, 1933— July 15, 1933	75 25
July 16, 1933— July 31, 1933	100 . 0
August 1, 1933— October 31, 1933	Price quotation for Western cream received in Boston.
November 3, 1933— February 28, 1934	Average butter market price plus 20% times 3.7.
March 1, 1934 March 15, 1934	Price quotation for Western cream received in Boston.
March 16, 1934— April 30, 1934	Average butter market price times 125% times 3.7 f.o.b. city; average butter market price times 120% times 3.7 f.o.b. country.
May 1, 1934— July 16, 1934	Average butter market price times 110% times 3.7 plus \$.085—f.o.b. city. Average butter market price times 105% times 3.7 plus \$.085—f.o.b. country.
July 17, 1934— May 17, 1935	Price quotation from Western cream received in Boston divided by 33 times 3.7 minus \$.115—f.o.b. city; less \$.06—f.o.b. country.
May 18, 1935— July 15, 1935	Average butter market price times 115% times 3.7.plus \$.065—f.o.b. city less \$.06—f.o.b. country.
July 16, 1935— February 8, 1936	Price quotation for Western cream received in Boston divided by 33 times 3.7 minus \$.1475—f.o.b. city less \$.06—f.o.b. country.

84. It will be noted that in some periods covered by the above table the Class II price was computed on the basis of the following factors: The average price for butter minus five cents plus 16 2/3 per cent. The deduction of five cents was an allowance for manufacturing costs and the addition of 16 2/3 per cent was for churn gain (churn gain is the amount by which the weight of butter exceeds the weight of the butterfat used in making that butter). This formula was designed to give a rough approximation of the butter value of milk. It made no allowance for the value of the skim-milk. It will also be noted that in other periods certain amounts ranging from 10 cents to 15 cents per hundredweight were added to the result of this formula. These sums were added to compensate for the values of ingredients other than butterfat in the milk. The factors of the formula largely depended upon the bargaining power of the parties. The division of the Class II milk into two categories, i. e., Class IIA and Class IIB, which prevailed during a part of the period covered by the above table was not based upon any physical differences in the milk but was merely a bargaining device.

85. Attached hereto as Exhibit 7 is a table showing the monthly average wholesale price per pound for butter in the Boston market for the years 1918 to 1936, inclusive.

86. From January 1922 through June 1927 a so-called "cream plan" was in operation in the Boston market. Under this plan producers delivering to certain specified stations, which had formerly been shipping milk into the market, were required to deliver cream instead of whole milk. The producers were paid the blended price for the milk equivalent of the cream less a charge for the skim milk which they kept on the farm. The charge for the skim milk was on a hundredweight basis and varied from time to time. During certain periods of the year when the market required whole milk, farmers were expected to discontinue the delivering of cream and deliver whole milk. There was no evidence as to how much of the milk produced or marketed in the area was affected by this "cream plan".

XVIII. Proposed Marketing Plans

87. In 1930 the Commissioners of Agriculture in the states of Maine, New Hampshire, Vermont, and Massachusetts selected a committee for the purpose of holding hearings, taking the evidence of interested parties, and making recommendations from which they hoped to bring about a more orderly and stabilized condition in the Boston market. The committee was known as the New England Milk Board and was comprised of Reginald Bird, Benjamin F. Cleaves and Guy Boyce. This committee, after holding hearings and taking evidence, submitted a report and

recommendation in July 1930.

88. One of the recommendations of the New England Milk Board was that a central marketing agency be formed to handle and market the milk of northern New England. The Commissioner of Agriculture for the state of Vermont assisted in the organization of the cooperative which was first organized as New England Dairies and is now known as New England Dairies, Inc. The purpose of New England Dairies was to provide a central sales agency for the sale of milk of the cooperatives who were members of it so as to bring about a uniform basis of price in the market and the promotion of sales for all producer groups. It was intended that New England Dairies should operate a market-wide pool so that all producers selling milk in the market should have a fair share of the fluid milk market. This plan was never consummated.

89. In 1932 producer organizations requested the governors of the New England states to appoint a board to work out a uniform basis for the sale of milk in the Boston market. This board was known as the Governor's Dairy Advisory Board and was composed of F. S. Washburn, Commissioner of Agriculture for the state of Maine; Andrew Felker, Commissiner of Agriculture of New Hampshire; Dr. H. B. Ellenberger, Professor at the University of Vermont; James O'Brien of Massachusetts; and Harry Lewis, Commissioner of Agriculture of Rhode Island. Producer organizations working in conjunction with the Board

proposed a plan in December 1931, which contemplated the establishment of uniform prices for the entire market and a market-wide equalization pool. The plan was not to go into effect unless the assent of 95% of the producer groups in the market was obtained. Since the required assent was not

obtained, the plan was never put into effect.

90. In January 1932, another plan was evolved for the establishment of a uniform price to distributors based on the use value of the milk sold in the Boston market. This plan was based upon individual dealer pools. This plan was also to go into effect providing specified groups of producer organizations and distributors approved the plan; it only required the approval of 65% of the producer groups in the This plan was put into effect in May 1932 and continued in effect through December 1932. Although all of the cooperatives in the market did not enter into the plan, the organizations following the plan handled approximately 80% of the milk in the Boston market during the period that it was in effect. As a part of this plan, New England Dairies was organized to act as the bargaining agent of the various cooperatives and it negotiated with distributors for a price to be paid for milk. The plan provided for arbitration in the event that New England Dairies was unable to agree with the distributors on a price.

91. In January 1933, various cooperative groups met with Reginald Bird and worked out a plan which was known as the "Bird'Plan". Included in this group of cooperatives were New England Milk Producers Association, Clyde Valley, Cabot, Richmond, St. Albans, Granite City, Bethel, and Shelburne which had been associated together in New England Dairies. Bellows Falls Cooperative Creamery and United Farmers also participated in the formation of this plan. The plan contemplated that the distributors should act as the agents of the producers for the distribution of milk and should receive a fixed commission for their services. The plan also contemplated the organization of two groups of cooperatives who were to market their milk through an

overhead central sales agency which was to be New England Dairies, Inc. The central sales agency was to sell the milk of the cooperative organizations at a uniform price and supervise the operation of a market-wide equalization pool for producers. It was in connection with this plan that New England Dairies changed its name to Consolidated Dairies. It was intended that New England Dairies, Inc. should become the central sales agency. This plan did not go into effect because all of the groups of producers involved did not agree.

92. Beginning on June 1, 1933, certain of the cooperative groups in the market, however, did sell their milk through Consolidated Dairies as the central sales agency. From June 1, 1933, until November 3, 1933, when the first federal license went into effect in the Boston market an equalization plan operated in which all milk, delivered by producers who were members of organizations which marketed through Consolidated Dairies, was pooled and paid for on the basis

of a uniform blended price.

92. In addition to the investigations which have been referred to in the preceding findings a number of other investigations have been made of conditions in the Boston market between 1915 and 1933 with a view to examining marketing conditions and the price fluctuations which have occurred from time to time and for the purpose of formulating plans to deal with such conditions. In 1916 and 1917 the Boston Chamber of Commerce made such a study and on December 31, 1917, published a report entitled "The Milk Question in New England". In 1921 and 1922, a committee, consisting largely of producers, made an investigation of marketing practices in the market with a view to devising a marketing plan. A similar study was made in 1924 with particular reference to the developments which had taken place in the market between 1921 and 1923. This study was undertaken by a committee which came into existence as a result of a conference at Bellows Falls in 1924 called by the editor of the New England Homestead. Again in 1927 the Commissioners of Agriculture of the states of Maine, New Hampshire, Vermont, and Massachusetts caused a study to be made with respect to the prices of milk, various suggested marketing plans, and certain proposals which had been made for the handling of surplus milk. As a result of these studies and of investigations made by the Department of Agriculture of the United States, that department published a study entitled "Some Economic Aspects of the Marketing of Milk and Cream in New England".

XIX. History of Recent Federal Regulation in the Boston Market

94. On November 3, 1933, certain milk distributors and producer associations operating in the Boston market entered into a marketing agreement with the Secretary of Agriculture as provided in the Agricultural Adjustment Act of 1933. The marketing agreement and the license issued therewith by the Secretary of Agriculture fixed uniform class prices on the use basis, provided for market-wide equalization, and also fixed resale prices for milk. marketing agreement and license were subsequently terminated and a new license without a marketing agreement was issued which became effective on March 16, 1934. This license provided for fixing class prices on a use basis and for a market-wide equalization pool but did not attempt to fix resale prices. This license was found to be invalid by decision of the District Court for the District of Massachusetts, and subsequently the government consented to a dismissal of its appeal in the Circuit Court of Appeals for the First Circuit. The license was terminated on February 9, 1936. On the same date the Secretary of Agriculture promulgated Order No. 4 (see Finding 6 supra).

PART THREE

MISCELLANEOUS FINDINGS

I. Milk Originating in Massachusetts

95. Of the total amount of milk arriving in Boston as whole milk during the period 1930 to 1936 inclusive, 11% originated in the Commonwealth of Massachusetts. The following table shows the total shipments of whole milk and of fluid cream to the Boston market by rail and truck from points within the Commonwealth of Massachusetts for the years 1932-1936 and for each month in 1937.

Λ,	M	III.K	CREAM		
PERIOD	Receipts (40-qt. units)	Per cent of all milk receipts	Receipts (4(-qt. units)	Per cent of all cream receipts	
1932	596,958	9.5	1264	.2	
1933	544,091	9.5	1509	.3	
1934	530,629	9.2	2202	.4	
1935	718,132	12.6	2248	.4	
1936	752,030	13.4	1949	.3	
1937			30		
January	62,998	. /3	20		
February	59,373	*	38		
March	67,103	10	84		
April	. 68,974	A / y	47		
May	75,039		283		
June	71,696		63		
July	62,870	The same	58	1	
August	59,079		72		
September	58,909		45	**	
October	61,789		33		
November	54,994		61		
December	61,195		35	*	
Total	764,019	13.6	839	1	

96. Practically all milk received in Boston from Massachusetts producers is and has been used for Class I purposes. The milk received at Boston from Massachusetts producers is nowhere near enough to meet the Class I demand of the Greater Boston marketing area. In 1937 less than 14 percent of the fluid milk receipts at Boston were from Massachusetts. There is no evidence that price cutting in the Greater Boston marketing area would affect the volume of receipts in that area from Massachusetts producers.

97. There is evidence that there has been a time when a carload of milk, or eighteen to twenty thousand pounds, would drop the wholesale price in the Boston market as much as one cent per quart. This would be true today if there were no regulation of any kind in the market. It is possible that as little as two thousand quarts of milk might affect the price, depending somewhat on the price at which milk was offered and how it was handled.

. 98. If Order No. 4 as amended should be applied to only part of the milk included in the Boston supply it would be possible for dealers to obtain a competitive advantage by purchasing milk which was not regulated by the order. If that milk which was not regulated by the federal order was produced in Massachusetts and was regulated by the Massachusetts State Control Board at its existing prices, there would be no competitive advantage or disadvantage. In the past, the Hood Company has suffered a competitive disadvantage due to the fact that certain dealers buying all of their milk from producers in the Commonwealth of Massachusetts have refused to comply with federal regulation in the Boston market. There is no evidence as to whether or not the price paid the Massachusetts farmer for his milk has had any effect upon the volume of milk moving in interstate commerce into the Boston market.

99. Whenever classified prices are in effect in a market, it is possible for an individual dealer to obtain a competitive advantage by buying milk at a flat price. If Order No. 4 as amended is to be effective in the Boston market, it will be

necessary for all dealers to adhere to the class price system provided therein of purchasing their milk in order to prevent some dealers from having the opportunity to obtain a competitive advantage by purchasing their milk on a flat price basis. The mere fact that a dealer buys on the flat price plan does not necessarily give him a competitive advantage. However, the practice of flat price buyers is to buy very close to their fluid milk requirements and it is obvious that if such a buyer buys on a flat price which is less than what the price for his milk would be on a use basis, he will own his milk cheaper than his competitors who are paying for milk on a use basis and will therefore obtain a competitive advantage. In the period between 1933 and 1936 certain flat price buyers in the market who did not comply with the federal licenses and orders, bought close to their fluid milk requirements, paid slightly more than the blended price payable under the licenses and orders, and still obtained their milk at a cost which was materially lower than the cost of Class I milk prescribed in the licenses and orders.

100. Under normal conditions in the Boston milk market, the tendency of handlers under the operation of Order No. 4, as amended, is to pay to producers no more than the blended price computed by the Market Administrator because of competitive economic conditions. Under normal conditions, the minimum resale prices fixed by the Massachusetts Milk Control Board in its official orders with respect to sales by handlers in the Boston Marketing Area tend to be the maximum prices which such handlers can obtain for market milk.

101. Attached hereto as Exhibit 8 is a certified copy of the minutes of a meeting of the Massachusetts State Milk Control Board held June 23, 1937, which contain Official

Order No. 832 and Official Order No. 833.

PART FOUR

ADMINISTRATION OF THE ORDER

I. The Market Administrator and His Office

102. Samuel W. Tator was designated Market Administrator under Order No. 4 as amended on August 1, 1937. From February 9, 1936, until February 10, 1937, Mr. Tator had been Market Administrator under Order No. 4. Prior to that time Mr. Tator was Administrator under License 38, regulating the handling of milk in the Boston market, which had been issued under the provisions of the original Agricultural Adjustment Act. Mr. Tator was appointed to this position about November 1, 1934, and continued to hold it until he resigned on or about February 10, 1937. Prior to his coming to Boston, Mr. Tator had acted as Administrator of a license in effect in the market in Providence, Rhode Island, a position which he held from approximately July 1, 1934, until he was appointed Administrator under the Boston license.

103. The Market Administrator maintains an office in Boston at 80 Federal Street. He also maintains a staff of employees. The number of the employees grew from sixteen on August 31, 1937, to thirty-nine on December 31, 1937. The Market Administrator employed fifteen auditors as of December 31, 1937. He began with two auditors in the month of August; acquired two more in the month of September; two or three more in the month of October; the others were hired in the months of November and December.

104. Mr. Tator, who is an accountant, trains the auditors for their work. Each of them is required to study the order, and is given various tests as to his comprehension of it before he is permitted to undertake auditing work. Before the auditor works independently he is sent out with another auditor who has been trained.

105. As part of his duties the Market Administrator prepared a set of books to be used in the operation of the office. These books include a ledger in which all engages are recorded that reflect cash receipts and disbursements, expenses, invoices, producer settlement accounts, marketing service accounts, and administration accounts. There is also a payroll book, an equalization book, an expense or cash disbursement book, and a cash receipts book. There are various other preliminary records which are kept by the Market Administrator. All of the financial transactions of the Market Administrator's office are gathered into the general ledger and that book reflects his cash position. The subsidiary books such as the cash books, equalization journals, and expense journals are posted direct to the general ledger. These various subsidiary books are posted from the original records in the Market Administrator's office.

II. Forms Furnished to Handlers

106. In connection with the administration of the Order, the Market Administrator caused a number of forms to be prepared for the use of handlers who were required to furnish information under the terms of the Order. Among the forms devised or adopted by the Market Administrator were the following: Form No. 8 which is the form on which a handler reported producers who started deliveries to the handler; Form No. 9 which is the form used by a handler to report producers who stopped delivering milk to him; Form No. 15 which is the form to be used in making reports by handlers who receive milk from producers; Form No. 16 which is the form to be used in making reports by producerdistributors, i.e., handlers who were also producers and received no milk from producers; Form No. 17 which is the form to be used in making reports by handlers buyers, i.e. handlers who purchased only from other handlers; and Form No. 25 which is the form to be used in reporting changes in names of farm operators.

107. The Market Administrator sent Form 15 together with a letter of instructions for filling it out to a list of handlers operating in the greater Boston marketing area. Early in August 1937 the Market Administrator prepared a list of handlers to whom Form 15 was to be sent on the basis of a

list which had been prepared by Mr. Aplin during the period prior to August 1, 1937, when he was Acting-Market Administrator. Mr. Aplin had received reports from handlers operating in the marketing area for the first delivery period in July 1937, and had supplemented the list of handlers in his office from those reports. The Market Administrator supplemented the information available in his office by making inquiries of the State Milk Control Board as to the persons holding licenses for the sale of milk in the marketing area under the provisions of Chapter 376 of the Act of 1934 of the Commonwealth of Massachusetts as amended (Milk Control Act) and also checked various other sources for any available information. The Market Administrator testified that the list of persons to whom Form 15 was to be sent was the best list that his office was able to make and that he had not had any difficulty in using it. In an attempt to keep the list current it has been necessary to eliminate handlers who have become inactive and to add names of new handlers from time to time. The Market Administrator made no attempt to ascertain the names of any handlers or producers delivering to such handlers, outside the states of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and New York who were engaged in shipping cream to the marketing area but who were not licensed to distribute and sell fluid milk in the marketing area and who in fact shipped no fluid milk to the marketing area.

108. Form 15 has been sent to the handlers on the above described list in each delivery period since August 1, 1937.

Form 15 follows: .



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109. The following letter of instructions accompanied by a Form 15 was mailed on August 13, 1937, to each handler on the Market Administrator's list:

Tel. Liberty 8636

MARKET ADMINISTRATOR under the Federal Milk Order issued by the Secretary of Agriculture for the GREATER BOSTON MARKETING AREA Room 746, 80 Federal Street Boston, Massachusetts

August 13, 1937

To Handlers in the Greater Boston Marketing Area who receive milk from Producers:

Section 1 of Article V of the Compilation of Order No. 4 Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area, with the Incorporation of Amendment No. 1 of August 1937, a copy of which was mailed you on August 5th, requires that "on or before the eighth day after the end of each delivery period, each handler shall . . . report . . . in the detail and form prescribed by the Market Administrator" receipts and sales of milk.

Enclosed is a four-page form (Form 15 Rev.) on which it is requested that you report your receipts and sales of milk for the period August 1-15, 1937.

Milk Receipts

The first four lines of the form call for a report of milk received from the members of qualified associations, divided as between regular producers and new producers. The definition of a new producer is given in a separate letter, which will be mailed to you in a few days.

The first line should show milk delivered to a plant located not more than 40 miles from the State House in Boston by producers whose farms are located within 40 miles of the State House in Boston. The second line should show milk delivered to a plant located not more than 40 miles from the State House in Boston by producers whose farms are located more than 40 miles. but not more than 80-miles, from the State House in Boston. The third line should show milk delivered to a plant located not more than 40 miles from the State House in Boston by producers whose farms are located more than 80 miles from the State House in Boston. The fourth line should show milk delivered by producers to plants located more than 40 miles from the State House in Boston, as detailed in Schedule A on page 2. The total of the first two columns of Schedule A should be carried to the fourth line on page 1.

Milk received from new producers should be shown in the column provided, using the same location breakdown as explained above for regular producers. The detail by individual producers should be shown in Schedule B and should agree in total with the figures on page 1 of the report as to receipts from new producers.

The next four lines on page 1 of the report call for a report of milk received from producers who are not members of a qualified association. The division of receipts as between city and country plants and from new producers is just the same as described above.

On the next line, marked Sub-total, show the addi-

tion of all figures appearing above that line.

The next line takes care of milk received from own farm production, if any. Please note that this does not necessarily call for all the milk produced on your own farm but only for that part which is received into your plant for ultimate sale or use in the market.

The next two lines call for receipts of milk, including skim milk, from other handlers, at Class I prices and at Class II prices. The name of handlers from

whom such milk is received must be shown under Schedule C on page 3.

Milk Sold, Distributed, or Used

Sales of Class I milk are to be divided between sales in the marketing area (as defined in the Order) and sales outside the marketing area. Under Schedule E on page 4, please give the detailed information called for. The names and addresses of other handlers to whom Class I milk has been sold must be shown. Under the section headed "Retail and Wholesale" show on the first line the total Class I milk sold (other than to handlers) in the Boston market. On succeeding lines show sales in each separate market outside the Boston area. The totals of the two columns must be carried to page 1.

The last item on page 1—"Class II Sold, Distributed, or Used"—must be clearly supported by your plant records, as Article III of the Order provides that all milk not specifically accounted for as Class II milk shall be Class I milk. Sales of milk (including skim milk) to other handlers which are included in Class II sales must be itemized under Schedule D on page 3. Satisfactory proof that such milk was utilized by the purchasing handler as Class II milk must be furnished by you within 15 days after the end of the period covered by this report.

Handlers who operate more than one country plant should attach a schedule showing shipments of milk from each country plant.

In signing Form 15 Rev., please note that the individual signing, if other than the handler himself, must have authority from the handler to sign in his behalf. Further copies of the form will be sent to you from time to time on which you are requested to report receipts and sales of milk for August 16-31, 1937, and succeeding periods.

If there is any point in connection with the preparation of this form which is not perfectly clear, we shall be glad to give you any further information requested.

Very truly yours,

SAMUEL W. TATOR

enc. Form 15 Rev.

Market Administrator

110. At different times between August 5 and August 17, 1937, the Market Administrator sent four other letters of instructions to the handlers described in Finding 107 supra for the purpose of assisting them in properly making reports. In general, these letters included instructions as to reporting sales to other handlers, sales to non-handlers, proof of Class II use, and milk received from new producers. The letters are attached to this report as Exhibits 9, 9a, 9b and 9c.

111. During the months of August and September the Market Administrator delegated two men to call on handlers to ask them to report and to assist them in reporting. One of these men continued this work after September and in addition the Market Administrator engaged another man to carry on the same work. On November 15, 1937, the Market Administrator wrote the following letter to each handler who had not submitted a report to him:

MARKET ADMINISTRATOR
under the
Federal Milk Order
issued by the Secretary of Agriculture for the
Greater Boston Marketing Area
Room 746, 80 Federal Street
Boston, Massachusetts.

November 15, 1937

Dear Sir:

We are sending you this reminder to give you one more opportunity to come into compliance with Federal regulation. The first requisite towards full compliance is that all handlers who buy milk from producers and who sell in the Greater Boston Marketing Area must file a record of receipts and sales of milk for each semi-monthly period on our Form 15, such as the one enclosed for the November 1-15, 1937 period. Although we have information that you come within the above classification, our records indicate that you have failed to file any such reports with us.

If you have mislaid the Forms 15 which we sent you for the periods from August 1 through October 31, 1937, we shall be glad to send you additional copies on request. If there is anything about filling out the form which is not clear to you, we should be glad to send someone to help you prepare your first reports.

Very truly yours,
SAMUEL W. TATOR
Market Administrator

112. On November 13, 1937, the Market Administrator sent two letters to handlers who were shown on his list as buying milk from other handlers but who had not made reports to him for all delivery periods up to that time. One of these letters was sent to handlers who had made some prior reports but whose reports were not complete. The

letter follows:

P-7(8)

enc. Form 15

MARKET ADMINISTRATOR
under the
Federal Milk Order
issued by the Secretary of Agriculture for the
GREATER BOSTON MARKETING AREA
Room 746, 80 Federal Street
Boston, Massachusetts

November 13, 1937

Dear Sir:

On checking over our records, we find that we do not have your report on our Form 17 for the period.

Perhaps this was an oversight on your part, and we are enclosing additional forms for your convenience. Please fill these out and return them to this office at once, so that you will be in full compliance with Order No. 4.

Very truly yours,
SAMUEL W. TATOR
Market Administrator

Encs. HB-5(S)

The other letter was sent to dealers who had made no reports up to that time. The letter follows:

Tel. Liberty 8636

under the
Federal Milk Order
issued by the Secretary of Agriculture for the

MARKET ADMINISTRATOR

GREATER BOSTON MARKETING AREA Room 746, 80 Federal Street Boston, Massachusetts

November 13, 1937

Dear Sir:

- Dair

At the close of each half month we have sent you a Form 17, such as the one enclosed for the November 1-15 period. Handler-Buyers are required under Order No. 4 to make reports of their purchases of milk from other handlers, but according to our records, you have failed to file any such reports with us.

It is of great importance that you file these reports regularly and we are sending you this reminder to give you another opportunity to comply with Federal regulations. You are not required to pay any assessment to this office if you buy your entire supply from another handler.

If you have lost the forms which we sent you for the periods from August 1 through October 31, we will be glad to send you additional forms for these periods at your request.

Very truly yours,
SAMUEL W. TATOR
Market Administrator

enc. Form 17 HB-4(S)

113. Between August 1, 1937, and December 31, 1937, the Market Administrator reported to the Secretary of Agriculture the names of those persons whom he considered as not complying with the order.

III. Determination as to the Administration Charge

114. Shortly before August 27, 1937, the Market Administrator determined that an amount of two cents per hundredweight should be paid for administration expense under the provisions of Section 1, Article X of the Order. The charge of two cents per hundredweight for administration expense is a charge applied to the total amount of milk which each handler receives from producers and which he produces himself. The determination made by the Market Administrator with respect to the amount to be paid under Section 1 of Article X of the Order was announced in a letter which the Market Administrator sent to handlers in the marketing area on August 27, 1937. The letter read in part as follows:

He (the Market Administrator) has also determined that the sum to be paid him by handlers for expense of administration shall be 2 cents per hundredweight of milk, until further notice.

In the announcement of blended prices published by the Market Administrator for each delivery period after August 1, 1937, a similar statement was contained.

115. The Market Administrator testified that the determination which was made shortly before August 27, 1937,

was to apply until changed by a subsequent determination. Subsequent to this determination no different determination was made with respect to the amount which should be paid for administration expense. The Market Administrator applied the determination that two cents should be paid for administration expense under the provisions of Section 1 of Article-X of the Order to each delivery period between August 1, 1937, and January 15, 1938.

IV. Determination as to the Marketing Service Charge

116. In accordance with the provisions of Section 1 of Article IX of the Order, the Market Administrator determined that two cents per hundredweight should be deducted from payments made to producers not members of associations designated as cooperatives by the Secretary of Agriculture for the various marketing services set forth in Section 1 of Article IX. The determination was made by the Market Administrator in the latter part of August 1937 but prior to the time that the blended price was announced for the first period in August. This determination was announced in a letter which the Market Administrator sent on August 27, 1937, to handlers of milk in the marketing area. The letter read in part as follows:

The Market Administrator has determined that the amount to be deducted for marketing services from the payments to producers who are not served by a qualified cooperative association, shall be 2 cents per hundredweight of milk, until further notice.

The amount to be deducted for marketing services under the provisions of Section 1 of Article IX of the Order has been published in each blended price announcement since August 1, 1937.

117. Between August 1, 1937, and December 31, 1937, the total charges assessed against the defendants in these suits for marketing services under the provisions of Section 1 of

Article IX of the order amounted to approximately \$30,000. It is now impossible for the Administrator to verify weights, sample, or test milk which was delivered between August 1, 1937, and December 31, 1937. It would be possible for the Administrator to furnish producers entitled to information under the provisions of said Article IX some valuable market information of an historical nature.

118. The Market Administrator keeps in his office a list of associations which he has been advised by the Secretary of Agriculture are designated as cooperatives under the Capper Volstead Act. Among the associations included on that list are: Bellows Falls, Kenduskeag Valley; Caledonia County Cooperative; Cabot Farmers Cooperative Creamery, Inc.; Manchester Dairies; Milton Cooperative; New England Dairies, Inc.; New England Milk Producers Association; and United Farmers.

V. Computation of the Class II Price

119. In each of the delivery periods between August 1, 1937, and December 31, 1937, the Market Administrator computed the Class II price in accordance with the instructions found in Section 3 of Article IV of Order No. 4 as amended.

120. The application of this method to a particular delivery period is shown by the following figures used in the computation of the Class II price for the delivery period August 1 to 15: The weighted average price for a forty-quart can of bottling-quality cream, in the Boston market was \$15.437; this figure divided by 35 equals \$.4678, which multiplied by 3.7 equals \$1.7309. The average of the weekly quotations per pound of clomestic 20-30 mesh casein was \$.135; this figure multiplied by 2.125 equals \$.2869, which added to \$1.7309 equals \$2.0178. The subtraction of \$.42 leaves \$1.598 which is the price for milk delivered to plants within forty miles of Boston. The deduction of \$.06 leaves \$1.538, the price for milk delivered to plants located outside the forty-mile zone.

121. The Class II price which was computed by this method for each delivery period between August 1, 1937, and December 31, 1937, is shown in the public announcement of the blended price for that delivery period which is set

forth in Finding 139 infra.

122. The Market Administrator publicly announced the Class II price thus computed for each of the delivery periods between August 1, 1937, and December 31, 1937, and the defendants raised no question as to this publication having been made in each case on or before the fifth day after the end of the delivery period for which the Class II price was computed.

VI. Computation of the Butterfat Differential

123. In each of the delivery periods between August 1, 1937, and December 31, 1937, the Market Administrator computed a butterfat differential in accordance with the instructions found in Section 3 of Article VIII of Order No. 4 as amended. The butterfat differential thus computed for each delivery period between August 1, 1937, and December 31, 1937, is shown in the public announcement of the blended price for that delivery period which is set forth in Finding 139 infra.

VII. The Computation of the Blended Price

124. The Market Administrator computed a blended price for each of the delivery periods between August 1, 1937, and December 31, 1937. A simplified description of a blended price in a marketwide pool such as the order establishes appears in Paragraph 76. The actual manner of computation of the blended price in each delivery period is described in Findings 125 to 139 infra.

A. The Determination of the Net Class I Milk of Each Handler

125. The Market Administrator first determined the net Class I milk of each handler whose milk was to be included in the computation of the blended price. This determination was made in the following manner: The Market Administrator eliminated from the amount of "Total Class I sales" as shown on each handler's Form 15 report the amount of milk sold or used as Class I which was purchased from other handlers, shown as the item "From other handlers at Class I prices." Next he eliminated from the remaining Class I 90% of the milk which the handler reported as "Received from own farm production" (the other 10% of this milk was eliminated from the Class II milk). The resulting figure was the net amount of milk used or disposed of for Class I purposes which the handler had received from producers.

B. Computation of the Value of the Net Class I Milk

126. The first step in the computation of value of milk for each handler as provided for in Article VII, Section 1 of the order was to multiply the amount of the net Class I milk by the applicable Class I price, i.e., \$3.19 per hundred-weight for all milk received at a city plant and the price of \$3.01 per hundredweight for milk received at plants located more than 40 miles from the State House in Boston (see Order, Art. IV, Sec. 2). The next step was to compute certain freight allowances and outside market differentials as explained in Findings 127 and 128 below.

dler shipped milk into the market from a plant beyond the 40-mile zone and the milk was used for Class I purposes, a freight allowance was computed for that milk. The freight allowance was computed by multiplying the amount of milk shipped into the Boston market by the freight rate as provided for in Article IV, Section 2, Paragraph 2 of the order. For the purpose of computing the freight allowance on Class I milk shipped from country stations, it was assumed that the milk received directly from producers at the handler's city plant was Class I milk. Consequently, the total amount of such milk was deducted from the net Class I

milk of the handler and the freight allowance allowed only on the balance. If the handler shipped to Boston from more than one country station, the Market Administrator assumed that the Class I shipments were from the stations nearest to Boston. Thus, in the case of such a handler he first computed a freight allowance on the amount of milk shipped from the station located nearest to Boston. He then computed a freight allowance on the amount of milk shipped from the next closest station to Boston and so on until he had computed a freight allowance on the net amount of the handler's Class I milk less the amount of milk which the handler had received directly from producers at the city plant. The total amount of the freight allowance was deducted from the amount computed a described in Finding

126 supra.

128. Computation of outside market differentials. Market Administrator next calculated the outside market The Market Administrator ascertained the current Class I prices paid to producers for milk which was marketed in areas other than the Boston marketing area in all cases where a report submitted to him indicated that milk was being sold in such other areas. The actual computation of the differential is accomplished by (a) calculating the difference between such prices and the Class I prices fixed in Order No. 4 on a hundredweight basis, and (b) adjusting the amount of that difference by the difference between the freight rate to Boston and the freight rate to the outside marketing area. The amount of the differential thus computed on a hundredweight basis was multiplied by the total amount of milk sold by the handler as Class I milk in each outside area to obtain the total amount of the differential. If the outside market price, as determined by the Market Administrator, in the outside market, after making the adjustment for the difference in the freight rate, was below the Class I price fixed in the order, the total amount of the differential so computed was subtracted from the amount remaining after deducting the amount for the freight allowance as explained in Finding 127 supra.

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the outside market price as determined by the Market Administrator, after making the adjustment for the differences in the freight rate, was higher than the Class I price fixed in the order, the Market Administrator added the amount of the differential to the amount remaining after deducting freight allowance as explained in Finding 127 supra.

129. The amount thus obtained by adding or subtracting the amount of the differentials as the case might be was the amount charged to the handler as the value of his net Class I milk.

C. Calculation of Net Class II Milk and Value Thereof

130. To determine the amount of the net Class II milk the Market Administrator took the amount indicated on the Form 15 report of each handler as "Class II sold, distributed or used" and eliminated (a) any milk reported as received "From other handlers at Class II prices" and (b) the remaining 10% of the total amount of milk reported as "Received from own farm production." The result was the net amount of Class II milk. The net amount of Class II milk was multiplied by the applicable Class II prices determined in accordance with Article IV, Section 3 of the order. The amount thus obtained was the amount charged to the handler as the value of his net Class II milk.

D. Calculation of the Value of the Net Class I and Net Class II Milk for All Handlers

131. The next step was to add to the amount charged to the handler as net value of his Class II milk the amount charged to the handler as net value of his Class I milk. The total amount charged to all handlers as the net value of Class I and Class II milk included in the price calculation was then obtained by adding together the totals computed for each handler whose report was used.

E. Calculation of Differentials

132. The next step was to calculate the net amount of certain differentials provided for in Article VIII of the

Order. The method for determining the net amount of the differentials was as follows: From the Form 15 reports submitted by all handlers who were included in the price calculation the amount of milk received at country stations in each freight zone from producers not new producers was totaled (The "freight zones" referred to are those established by the Interstate Commerce Commission and roughly approximate concentric bands ten miles in width, with Boston as the center. These are to be distinguished from the "location zones" established in the order—See Article IV. Section 1 and Article VIII, Section 4 of the Order.) The total amount of milk so determined in each freight zone beyond 40 miles was multiplied by the applicable freight rate to Boston from that zone. By adding together the totals for each zone, the total amount of freight differentials for all milk received from producers at plants outside the 40-mile zone was determined. From this amount was deducted the sum of the three differentials referred to in Paragraphs 2, 3, and 4, Section 4 of Article VIII of the Order. The three differentials so subtracted from the total amount of freight differentials are: (1) 18 cents per hundredweight of milk delivered by producers directly to a city plant, (2) 46 cents per hundredweight of milk delivered by producers whose farms are located within the 40-mile location zone, and (3) 23 cents per hundredweight for milk delivered by producers whose farms are located within the 41-80 mile location zone. In order to compute the total amount of these differentials it was necessary to obtain from each handler's Form 15 report and to total for all handlers who were included in the price calculation: (1) The total amount of milk received at city plants from producers who are not new producers; (2) the total amount of milk received from producers who were not new producers and whose farms are located within the 40-mile location zone; and (3) the total amount of milk received from producers who were not new producers and whose farms are located in the 41-80 mile location zone. totals were then multiplied by the applicable differentials and the amounts thus obtained were added together and the total amount of the differentials was deducted from the freight differentials described above.

133. The net amount of the differentials was then added to the total amount charged to all handlers as the value of the net Class I and Class II milk as previously computed in Finding 131 supra.

F. Computation of Amount Payable to New Producers

134. The next step was to compute the total amount to be paid to new producers for the milk which they delivered. This was done by multiplying the total amount of milk delivered by new producers to city plants of handlers who were included in the price calculation by the applicable Class II price and multiplying the total amount of milk delivered by new producers to country plants of handlers who were included in the price calculation by the Class II price applicable to country plants. These amounts were then added together and the sum was deducted from the total amount charged to all handlers as the value of the Class I and Class II milk, plus differentials, computed in Finding 133 supra. The total amount of milk delivered by new producers was also eliminated from the total amount of milk received from producers.

G. Reduction of Amount to Per Hundredweight Basis

135. By dividing the total amount of milk received from producers (other than new producers) into the total amount charged to all handlers as the value of Class I and Class II milk, plus differentials, less the amount to be paid to new producers, the Market Administrator obtained a per hundredweight price.

H. Cash Balance Retained by Market Administrator

136. From the price so computed he deducted not less than four nor more than five cents per hundredweight for the purpose of retaining the cash balance referred to in

Article VII, Section 2, Paragraph 5 of the Order. In certain periods there was added to the resulting price a number of cents per hundredweight sufficient to distribute any cash balance which the Administrator had accumulated.

I. The Basic Blended Price and Zone Prices

137. The foregoing method of computation resulted in a basic blended price from which the zone prices were computed in the following manner: The location zone prices for milk delivered to plants within 40 miles of the State House in Boston were calculated by adding 18 cents to the basic blended price. For all milk delivered at plants beyond the 40-mile location zone the price to be paid producers was the basic blended price less the freight rate to Boston from the particular freight zone in which the country plant was located. On all milk coming from farms located within the 40-mile location zone there was added to the price to producers the differential of 46 cents and on all milk received from producers whose farms are located in the 41-80 mile location zone there was added to the price to be paid such producers the differential of 23 cents per hundredweight.

J. Announcement of the Blended Price

138. On or before the tweifth day after the end of each delivery period between August 1, 1937, and August 15, 1938, the Market Administrator made a public announcement of the blended price for each of the aforesaid delivery periods in the form of the documents attached hereto as Exhibit 10.

VIII. Operation of the Equalization Provisions

139. If the total amount payable by a handler to producers delivering milk to him in a particular delivery period is greater than the total amount charged to the handler as the value of the milk which the handler receives from producers in that particular delivery period, com-

puted on the basis of the prices fixed in Order No. 4, as amended, the handler is credited with the difference in his producer settlement account on the books of the Market Administrator. This credit is offset by a charge to the general "Producer Settlement Account" on the books of the Administrator. In such circumstances the handler is entitled to receive an equalization payment from the Market Administrator (Par. 3, Sec. 1 of Art. VIII of Order No. 4, as amended). For example, in the delivery period August 1-15, 1937, the bill rendered to the Milton Cooperative Dairy Corporation showed that the total milk received from producers and the value thereof was \$57,647.08; and that the amounts payable to its producers for 3.7 milk at the established zone prices totalled \$63,792.05. Thus in that particular delivery period this handler was entitled to receive from the Market Administrator the differences, i. e., \$6,117.97. A Mandler in this position receives a check from the Market Administrator for the amount of his equalization credit. The checks are sent on the 25th day after the close of the delivery period to which the equalization credit applies and are sent to the dealer on the assumption that he has paid or will pay his producers for the milk received in that delivery period on the basis of the prices announced by the Market Administrator. An audit of the handler's payrolls is subsequently made to determine what payments he has in fact made to producers.

140. If the total amount payable by a handler to producers delivering milk to him in a particular delivery period is less than the total amount charged to the handler as the value of the milk which the handler receives from producers in that particular delivery period computed on the basis of the prices fixed in Order No. 4, as amended, the handler is debited with the amount of the difference in his producer settlement account on the books of the Market Administrator. This debit is offset by a corresponding credit in the general "Producer Settlement Account". In such circumstances the Market Administrator renders a

bill to the handler for the amount of the debit. For example, in the delivery period October 1-15, 1937, the bill rendered to the Whiting Company showed that the total milk received from producers and the value thereof was \$81,010.66, and that the amounts payable to its producers for 3.7 milk at the established zone prices totaled \$64,085.21. Thus, in that particular delivery period this handler was billed by the Market Administrator for the difference, i. e., \$16,925.45. By the terms of Article VIII, Section 1 of the order, this payment is required to be made on or before the twenty-fifth day after the close of the delivery period to which the producer settlement debit applies and is made to the Market Administrator.

141. Except for such differences as may be created by the deductions which the Market Administrator makes for the purpose of creating a cash reserve or by the payments he makes for the purpose of distributing the cash reserve, in any particular delivery period the debit charges for equalization payments due from handlers whose milk is included in the computation of the blended price are offset . by credits for equalization payments due to other handlers whose milk was included in the computation of the blended price. With respect to the two delivery periods in August, the equalization debits to handlers are offset on the Market Administrator's books by equalization credits to other handlers. However, in each delivery period from September 1, 1937, to and including December 31, 1937, the debits for equalization payments due from noncomplying handlers (whose milk was not included in the computation of the blended price as is reported in Paragraphs 144 to 148 below) have not been offset by credits to other handlers, whether complying or noncomplying. The aggregate of such charges which are not offset on the books of the 'A !ministrator by corresponding credits to other handlers was \$490,094.90 for the period September 1 to December 31, 1937. 'nese debits to the noncomplying handlers are, however, offset by a credit to the general producer settlement account as above explained. The equalization accounts for the two delivery periods in August have not

been liquidated.

142. The Market Administrator testified that if he receives the amount of the equalization debits which have been billed to the defendants in each of the delivery periods between September 1, 1937, and December 31, 1937, he will ask the Secretary of Agriculture for advice with respect to the distribution of this money.

IX. The Exclusion and Inclusion of Milk in Connection with the Computation of the Blended Price

143. The findings as to the exclusion and inclusion of milk in connection with the computation of the blended price will be divided into three general categories: (1) The exclusion and inclusion of dealers, (2) the exclusion and inclusion of particular plants, and (3) the exclusion and inclusion of milk as Class I or Class II.

A. The Exclusion and Inclusion of Dealers

144. Availability of reports. No dealer was included in the computation of the blended price in any delivery period from August 1, 1937, to and including December 31, 1937, unless, at the time the blended price was computed, the dealer's report was in the Market Administrator's hands and was in such condition that it could be used for the purpose of computing the blended price.

145 Receipt of milk from producers. No dealer was included in the computation of the blended price for any delivery period from August 1, 1937, to and including December 31, 1937, unless his reports showed that he received

some milk from producers.

146. The making of certain payments referred to in Section 1 of Article VIII of Order No. 4, as amended. In each delivery period from September 1, 1937, to and including December 31, 1937, the Market Administrator excluded from the computation of the blended price, milk reported by handlers who had not made certain payments

referred to in paragraph 3, Section 1 of Article VIII of Order No. 4, as amended. Thus, the Market Administrator excluded all handlers who at the time of the computation of the blended price had not paid in full any debit balance in the handler's producer settlement account outstanding on the Market Administrator's books after making the entries for the delivery period next preceding but one.

147. If, in any delivery period a substantial amount of equalization charges against one or more handlers should not be paid, the Administrator could not make full payment of equalization credits for that period to certain other dealers, to be used by them in paying the blended price to their producers. If in each delivery period subsequent to August 31, 1937, the Market Administrator had computed a blended price, including all of the milk handled by the defendants which was excluded for the reason that they had not made the payments required by paragraph 3 of Section 1 of Article VIII of the order for the period next preceding but one, the blended price so computed would have been higher than the announced blended price for each delivery period after August 31, 1937, to and including December 31, 1937.

148. In certain instances particular handlers were excluded even though they had no unpaid balance for producer settlement account with respect to the particular milk which they had handled in the delivery period next preceding but one. In each of these instances, however, the Market Administrator, at the time of the computation of the blended price, had not received payment in liquidation of a debit balance for producer settlement account outstanding on his books after making the entries for the delivery period next preceding but one. The Market Administrator adopted this construction of Paragraph 1 of Section 2 of Article VII of Order No. 4, as amended, upon the advice of the Acting Chief of the Dairy Section of the Agricultural Adjustment Administration, Dr. Miller.

149. In no delivery period between August 1, 1937, to and including December 31, 1937, was any handler excluded from the computation of the blended price because of his failure to pay the blended price to his own producers for milk which he received in the next preceding delivery period but one.

150. New England Dairies, Inc. was included in the price computation for every delivery period from August 1, 1937, to and including December 31, 1937, although New England Dairies, Inc. has not paid to its individual members and to the members of affiliated cooperatives delivering to its plant the full amount of the blended price announced by the Market Administrator in the two delivery periods in August, 1937. On the contrary, New England Dairies, Inc. made payments to its producers which were less than the blended price so announced and designated such payments as being "on account". New England Dairies, Inc. has not yet been paid the amount of the credits to its producer settlement account for the two delivery periods in August.

151. About September 9, 1937 certain persons representing New England Dairies, Inc. informed the Market Administrator that New England Dairies, Inc. would not be able to pay the blended price; for the two periods in August unless it received from the Market Administrator the amounts due it for equalization in those two periods! The Administrator did not at that time or thereafter pay New England Dairies, Inc., or offer any assurance that he would pay, the amounts due it for equalization in those two periods. The Administrator did not at any time thereafter determine or attempt to determine either by informal inquiry, by audit, or otherwise, the prices paid by New England Dairies, Inc. for milk received from producers during August, 1937 until in January, 1938. The books of New England Dairies, Inc. would have disclosed what had". been paid. The Market Administrator did not obtain the payrolls of the New England Dairies, Inc. for the purpose of making an audit with respect to their payments in the

two delivery periods in August until some time in January, 1938 and on February 3, 1938 the audit of those payrolls had not as yet been completed. The effect of including the milk of New England Dairies, Inc. in the price computations for delivery periods after September 1, 1937 was, in some periods, to lower the blended price and in other periods to raise it.

152. There was no evidence that any other handler whose milk was included in the computation of the blended price for any of the delivery periods between September 1, 1937, to and including December 31, 1937, had failed to pay the blended price to his producers with respect to the milk received in any delivery period between August 1, 1937.

and December 31, 1937.

153. The Handling of Milk sold as Milk or Cream, in the marketing area. The Market Administrator excluded from the computation of the blended price in each of the delivery periods between August 1, 1937 and December 31, 1937, any handler whose reports showed that he had not handled milk which was sold as milk or cream in the marketing area as defined in the order.

B. The Exclusion and Inclusion of Particular Plants.

154. Plants which shipped no milk or cream to the marketing area during the delivery period. No milk received at a country plant was included in the computation of the blended price for any delivery period between August 1, 1937 and December 31, 1937, if the Market Administrator knew on or before the date of the computation of the blended price that no milk or cream was shipped from that plant to the marketing area as defined in the order during the particular delivery period.

155. If a plant otherwise eligible to be included in the price computation reported some milk or cream shipped to the marketing area as defined in the order during a particular delivery period, all the milk received at that plant was included in the price computation regardless of the

percentage of its total receipts which were shipped into the marketing area as defined in the order. The table on pages 168-169 indicates the approximate percentage of the total amount of milk received at each of the plants operated by or affiliated with New England Dairies, Inc. which was shipped to the marketing area as defined in the order in May, 1937 and in each delivery period between August 1, 1937 and December 31, 1937.

156. The table on pages 170-171 shows for May and for each delivery period between August 1, 1937 and December 31, 1937, whether or not country plants operated by or affiliated with New England Dairies, Inc. shipped milk, cream or milk and cream into the marketing area as defined in the order in each of the aforesaid delivery periods.

157. The Hiram plant of New England Dairies, Inc. shipped no milk or cream into the marketing area as defined in the order between August 1, 1937 and December 15, 1937. Nevertheless, New England Dairies, Inc. included the milk which it received at the Hiram plant in its Form 15 reports for the two delivery periods in August, The milk reported as received by New England Dairies. Inc. at its Hiram plant was included in the computation of the blended price for the two delivery periods. in August, 1937 but was excluded in each subsequent delivery period to and including December 15, 1937. No change has been made in the blended price for the two delivery periods in August, 1937. An adjustment has been made by the Market Administrator in the accounts of New England Dairies, Inc. to exclude from the accounts of New England Dairies, Inc. the milk reported as received at the Hiram plant in those periods in the manner explained in Finding 185 infra.

158. The Swanton plant of Milton Cooperative Dairy Corporation shipped no milk or cream into the marketing

NEW	ENGLAND

Percentage of Butterfat Re-

Shipp od to Custom-Greater Bos-

									Grea	ter Bos.
	180	4						May	and A	nomet to
14.)				WARE 21	ugust to
					1		AY		AT	GUST '
		-	-			15 .	16-31		1-15	16-31
Bethel, Vt.		•				%	%		%	40-31
Duelin at a 77					49	0.9	30.3			
Burlington, Vt.					44				44.2	8.3
Grand Isle, Vt.				7			69.8		11.8	10.5
Granite City, Vt.					11		. 16.3		18.5	14.3
Mt. Mansfield, Vt.	•		*		. 70		30.3		32.4	31.2
					15	.0	16.6		32.4	31.2
Richmond, Vt.		3 8			28	7	40 =			01.0
St. Albans, Vt.							40.4		32.4	31.9
Shelburne, Vt.					. 78.		83.5		87.0	96,4
Tunbridge, Vt.					2.		30.3		. 27.9	8.5
White River, Vt.					52.		100.		100.	100.
					70.	.5	73.5	.,	79.6	
Cummings, N. H.									13.0	80.2
Hiram, Me.					34.	7	71.6			
Irona, N. Y.										. 0
Strafford, Vt.					7.	8 .	1.6		7.0	4.8
Wells River, Vt.	*				63	6	82.6			
	*	100			97	0	83.4		64.9	72.0
Aburg, Vt.						-		,		-
Bradford, Vt.					11.6	В	16.3	Leased	to others	Jay 1
Cambridge, Vt.			*		. 44.6	3	52.2		99.1	
Chelsea, Vt.					81.5	5	66.5			94.1
Colebrack N II					96.5		95.7.		27.2	45.5
Colebrook, N. H.					20.0		. 50.1.		98.1	99.6
Concord, Vt.									58.2	34.1 .
Craftsbury, Vt.			1		52.3		70.1		52.9	
Derby, Vt.					81.5		66.5			.53.6
Detroit, Me.					71.2		11.3	,	27.2	45.5
F Barbabian Yr					26,9				57.1	11.1
E. Berkshire, Vt.					58.7		71.9		10.1	12.4
Enosburg Falls, Vt.					. 170.1		36.4	. /	42.0	26.5
Essex Center, Vt.			,		84.7		96.8	,)	42.0	00 5
Fairlee, Vt.					28.7		66.5			26.5
Green berg Tra					44.6				27.2	45.5
Greensboro, Vt.	* 1				81.5		52.5		73.6	55.9
Hough's Crossing,	Vt.						66.5		27.2	45.5
Hoosick, N. Y.					86.6		62.0		36.0	28.1
Irasburg, Vt.					75.0		82.7			
Island Pond, Vt.					85.6		11.3			
I amonatan N. VI.					86.1				64.1	· 76.5
Lancaster, N. H.					Onened	A	11.3		58.2	34.1
Lisbon, N. H.	,				Opened	Augi	ust, 1937		52.9	53.6
McIndoes, Vt.			4		pened	Augu	ıst, 1937		89.4	100.
Morrisville, Vt.					52.3		70.1			
Newbury, Vt.					81.5	-			50.9	53.6
No Hoverbill av					. 44.6		66.5		27.2	45.5
No. Haverhill, N. H.					2000		52.2		99.1	94.1
Oakland, Me.					44.6		52.2		98.4	100.
Orleans, Vt.					26.9		71.9		10.1	12.4
Salisbury, Vt.					85.6		11 2			
Shoreham Tr					11.7		11.3		64.1	76.5
Shoreham, Vt.							20.0		36.0	6.3
Union, Me.			. 0		86.6		62.0		36.0	28.1
W. Fairlee, Vt.					32.5				87.3	76.4
	-				44.6		52.2		92.8	92.6

DAIRIES, INC.

ceived at Country Plants ers Selling in the ton Market

Dece	mber, 1937									6	
	TEMBER		oc	TOBER						4	
1.15	. 16:30		1-15	16-31			VEMBER		DE	CEMBE	R
.%	%		%	%		1.15	16-30		1-15		16-31
35.1	29.7	-	31.8	60.6	* %	82.7	82.3				% *
. 22.5	53.7		43.3	. 43.4		30.7	~ - ***	-	94.5		80.1
26.4	43.2		37.6	35.3		83.8	00,0		35.0	4	47.3
36.1			55.9	33.1			97.4		72.1	. 4	40.2.
3.5	10.9		40.9	33.1		80.0	78.9		85.2		84.7
48.2	53.2					54.8	59.9		58.7	. 7	77.9
95.7	94.7		46.8	62.3		65.4	59.9		53.8		
13,7		:	96.6	100.		97.7	99.4				57.7
100.	8.3		5.2	14.8		36:8	31:5		100.		94.0
77.6	74.8		85.2	100.		80.0	78.9		6.2		19.2
	72.1	1	74.4	69.7.		51.6			. 85.2		34.7
10.6	2.0 %	1	38.9				49.6		58.7	6	35.0
	4.0	,	30.9	60.5		32.6	40.1		43.3	. 19	6.7
	7.								10.0		
. 70.7	61.2		00.0							1	9.4
47.5	29.3		63.2	75.3		60.7	71.0		67.8		
*****	28.3		60.3	76.7		36.4	59.9				0.0
							00.0		74.8	8	0.8
96.0	97.7		95.7	98.1						8	
31.0	20.5		56.5	46.2		96.9	98.9		98.0	9/	6.7
96.2	96.7		7.6			17.3	23.6			closed	1
25.6	14.9		10.4	98.4		99.5	100.		100.		5.8
72.8		,	9.4	98.4		91.6	91.8		. 90.7	-	
	25.2	6	11.9	67.5		29.6				100	
31.0	20.5	5	6.5	46:2	9		31.3		53.9	75	5.9
54.4	55.0	6	6.9	74.1		50.8	Plant clos	ed.		•	
37.5	44.2		8.6	58.8		64.4	57.2		86.0	89	7.7
39.0	41.0		9.4	39.0	1	100.	100.		100.	100	
39.0 .	41.0					39.6 -	55.0		49.0		.4
31.0			9.4	39.0		39.6	55.0				
73.3	20.5		6.5	46.2		14.0	23.6	and .	49.0	50	
31.0.	74.9	6	3.8	61.3		78.0	81.7	4.	14.8	16	
48.0	20.5	. 50	6.5	46.2		50.8	23.6		88.8	75	.9
	32.7	4	5.2	61.4		88.0			14.8	16.	.4
95.5	97.5	0.	3.6				90.9		- 86.7	85.	.9
Plant	Closed	0.	0.0	5.7		Not op	erating				
25.6	14.9		- 0		* *			4			
72.8	25.2		5.6	56.0		3.5	12.0		9.7		
100.	100.	61		98.4		91.6	91.8		90.7	57.	
72.8		100).	100.		98.6	100.		100.	100.	
	25.2	61	0	67.5					100.	100.	c c
31.0	20.5.	56		46.2		98.6	100.		100.	100.	
96.0	74.9	91		100.	46	17.3	23.6		14.8	16.	
00.	100.	100			,	98.6	100.		100.	100.	
37.5	44.2	48		100.		98.6	100,	1	100.	100.	
52.5		20	.0	58.8		23.7	17.5		36.7		
8.7	25.2	16.	.2	39.1		77.0				39.0	
48.0			.6	7.4			72.8		75.9	97.6	8
37.5	32.7	45.		61.4		19.3	1.6		1.7		7
1.1	44.2	48.		58.8		88.0	90.9		86.7	85.9)
1.1	89.1	97.		98.5	, .	1.1	17.5	0	79.4	91.6	
				90.0		98.5	98.3	E.3	98.0	99.1	
							•			00.1	

STATIONS RECEIVING WHOLE MILK AND MAKING SHIPMENTS TO THE GREATER BOSTON MARKETING AREA — YEAR 1937 (M-Milk — C—Cream — MC—Milk & Cream)

Bethel, Vt. Burlington, Vt. Grand Isle, Vt. Mt. Mannfeld, Vt. Bichmond, Vt. Bichmond, Vt. Grand Isle, Vt. Bichmond, Vt. Bichmond, Vt. Grand Isle, Vt. Mrand Isle, Vt. Grand Isle, Vt.	STATION	МАУ		1-15 16.	UST 16-31	SEPTE 1-15	SEPTEMBER 1-15 16-80	1.15	OCTOBER 1-15 16-31	NOVE 1-15	NOVEMBER 1-15 16-30	DECEMBER 1-15 16-8	WBER 16-81	
C C C C C C C C C C C C C C C C C C C	Bethel. Vt.	MC		NC.		27	M			200	-	-		
V C C C C C C MC						O THE		M	M	MC	- PEC	MC	MC	
C	Burlington, Vt.	0		0			O	MC	MC		MC	MC	MC	
M M	Grand Isle, Vt.	0.		0		0	0	MC	MC	MC	MC	MC	MC	
C C C C C C MC MC MC MC MC MC MC MC MC M	Granite City, Vt.	M		M		WC,	W	M	. W	×	N	×	×	
MC MC MC MC MC MC C </td <td>Mt. Mansfield, Vt.</td> <td>C</td> <td></td> <td>O</td> <td></td> <td>c</td> <td>0</td> <td>MC</td> <td>MC</td> <td>MC</td> <td>MC</td> <td>MC</td> <td>MC</td> <td></td>	Mt. Mansfield, Vt.	C		O		c	0	MC	MC	MC	MC	MC	MC	
C C C C C C C C C C C C C C C C C C C	Richmond, Vt.	MC		MC		No	N	200	7	7			-	
C MC C C C MC	St Albane Ve	1 6						3		and a	2	MC	MC	
t. C MC C C MC MC <td>St. Albams, Vt.</td> <td>0</td> <td></td> <td></td> <td></td> <td></td> <td>o</td> <td>0</td> <td>0</td> <td>0</td> <td>MC</td> <td>0</td> <td>٥</td> <td></td>	St. Albams, Vt.	0					o	0	0	0	MC	0	٥	
T. MC C C C C C MC	Shelburne, Vt.	0		MC		0	0	MC	MC	MC .	MC	MC	MC	
Vt. C C C C C MC	Tunbridge, Vt.	MC		0		0	0	MC	MC	MC	MC	MC	9	
The content of the	White River, Vt.	0	8/2	C 2			0	MC	MC	. MC	MC	MC.	MC	
None C C C C C C C C C	Cummings, N. H.	.0		None		M	0	MC	MC	M	M	M	×	
C C C C None None C C MC MC <td>Hiram, Me.</td> <td>None</td> <td></td> <td>None</td> <td></td> <td>None</td> <td>None</td> <td>None</td> <td>None</td> <td>None</td> <td>None</td> <td>None</td> <td>MC</td> <td></td>	Hiram, Me.	None		None		None	None	None	None	None	None	None	MC	
Vt. C C C C MC MC <td>Irona, N. Y.</td> <td>o</td> <td></td> <td>0</td> <td></td> <td>None</td> <td>None</td> <td>0</td> <td>0</td> <td></td> <td></td> <td></td> <td></td> <td></td>	Irona, N. Y.	o		0		None	None	0	0					
T. V. C None . None . C MC MC MC MC MC MC MC . MC . MC . M	Strafford, Vt.	0		0		0	0	MC	. MC	MC	MC	MC	MC	
Vt. MC MC MC M M M M M M M M M M M M M M M	Wells River, Vt.	0		None .		0	0	MC	MC	MC	MC	MC	MC	
Vt. MC MC MC M M M M M M M M M Plant eld T. M M M M M M M M M M M M M M M M M M M	Alburg, Vt.	0.		Leased to		ily 1st								
Vt. C MC MC M C MC MC M M M M M M M M M M	Bradford, Vt.	MC		MC.		M	×	M	W	M	X	X	×	
1, 1937 MC MC M. C MC MC MC MC MC	Cambridge, Vt.	0		MC		M	C	MC	MC	M	M	Plant c	losed	
1, 1937 MC MC M. C MC MC MC MC MC	Chelsea, Vt.	M		×		M	M	M	×	M	×	W	M	
	Colebrook, N. H. Open	ed June 1,	1937	MC		M	0	MC	MC	MC	MC	MC	MC	

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0	Plant	MC	M	MC		1.	E	M	M	M				2 :	M	×	>	1	MC	M.	M	M	MC	MC	MC	M	M
MC	MC	MC	*	0	-		# :	M :	×	×	. ,	-			W	M	M		N :	N :	4	M	W	MC	M	M	M
, MC	MC	MC	×	. MC	MC	MO		E .	W.	W	0		MC		W	W	M	No	2	4 3	W ;	×	MC	MC	MC	MC	M
, WC	MC .	MC	MC	MC	MC	N	2	100	2	4	0	,	MC	707		W	M	MC	2		N. C.	MC	MC	MC &	MC	MC	M
MC																											
MG	MC	2	MC.	0	0	MC /	MC	No.	× ×		٥	Plant o		M	1 >	-	M	MC	M.				MC	0	MC	NOE	× ×
MO																											
MC	0 5		0 0	0	0	0	MC	. 0	MC		None	0	0	MC	M		MC	MC	MC	M	MC		MC .				
				. •	,									1937	1937							-	4	2			
MO	0 0	MC)	O	MC	MC	0	0		0 0	0	0	August	August		MC	0	MC	M	MC			. כ		WG	
				5.00		1			Vt.					Opened	Opened										oʻ		
7t.			e. Vt.		ralle, Vt	V.		Vt.	ossing,	•			1, VE.	N. H.	H.					II, N. H.	*			ند ا		Vt	- 1
Concord, Vt.	rby, Vt.	troit, M.	Berkshir		Binger	er ctr.,	rlee, Vt.	reensporo,	gh's Cr	N April	hime T	, in a	no Fond	caster,	disbon, N.	Podenie I	, co., nr.	ribville,	bury, V	Haverhi	and, Me	Planne Vt	alishmry V	eham. V	n, Me.	Pairlee.	
රි ර්	De	De	B				2	Fre	Hor	Hoe			212	4	18	-	3	1	e	10.	ak	Fla	ali.	hor	nio		

area as defined in the order between August 1, 1937 and December 31, 1937. Nevertheless, Milton Cooperative Dairy Corporation included the milk received at the Swanton plant in its Form 15 reports for both delivery periods in August, 1937: The milk so reported as received at the Swanton plant was included in the computation of the blended price for both delivery periods in August, 1937, but was excluded in each succeeding delivery period to and including December 31, 1937. No change has been made in the blended price announced by the Market Administrator for the two delivery periods in August, 1937, but an adjustment has been made by the Market Administrator in the accounts of Milton Cooperative Dairy Corporation to exclude the milk reported as received at the Swanton plant during the month of August, 1937, as explained in Finding 185 infra.

159. In the two delivery periods in August, 1937 the Wells River plant of the New England Dairies, Inc. did not ship any milk or cream to the marketing area as defined in the order; and in the delivery periods September 16-30 and December 16-31, 1937, the Salisbury plant of New England Dairies, Inc. shipped no milk, or cream to the marketing area as defined in the order. Nevertheless, New England Dairies, Inc. included the milk received at the Wells River plant in its Form 15 reports for both delivery periods in August and included the milk received at the Salisbury plant in its Form 15 reports for the delivery periods September 16-30 and December 16-31, 1937.

160. All the milk reported to the Market Administrator as received at the Wells River and Salisbury plants of New England Dairies, Inc. was included in the computation of the blended price for each delivery period between August 1, 1937 and December 31, 1937. No subsequent adjustment has been made in the blended price announced by the Market Administrator or in the accounts of New England Dairies, Inc. for the reason that in any delivery period no milk or cream was shipped to the marketing area from the plants at Wells River and Salisbury.

he computed the blended price for the two delivery periods in August, 1937, and the delivery periods September 16-30 and December 16-31, he had no knowledge that no shipments of milk or cream had come to the marketing area as defined in the order from the Wells River and Salisbury plants of New England Dairies, Inc. The Market Administrator further testified that if he subsequently discovers, on auditing the books of New England Dairies, Inc. that no milk or cream was shipped to the marketing area as defined in the order from a particular plant in a particular delivery period he will make the necessary adjustments to exclude the milk received at that plant in the particular delivery periods from the accounts of New England Dairies, Inc.

162. For the delivery periods in which either the Wells River or Salisbury plants of New England Dairies, Inc. may have shipped no milk or cream to the marketing area as defined in the order, the Form 15 reports submitted by New England Dairies, Inc. did not disclose that no milk or cream came to the marketing area as defined in the order from the said plants. In fact, the report submitted by New England Dairies, Inc. for the delivery period August 1-15, 1937 showed on its face that the Wells River plant shipped milk to Boston. On or about September 27, 1937, the Market Administrator advised the managers of New England Dairies, Inc. and Milton Cooperative Dairy Corporation that he would exclude milk received at any plant from the computation of the blended price which did not ship either milk or cream to the marketing area as defined in the order during the delivery period to which the price computation applied. No written instructions as to what plants were to be reported to the Market Administrator were issued by the Market Administrator except such as were contained in the forms for reports, the order, and the letter described in paragraphs 108 and 109 of this re163. Plant approved by local health authorities. No milk received at a country plant was included in the computation of the blended price if the Market Administrator had knowledge that the country plant at which the milk was received was not approved for the shipment of fluid milk by some one of the cities or towns in the marketing area as defined in the order.

164. About the middle of August, 1937 the Market Administrator, with the assistance of Mr. Aplin, began preparing a list of plants approved for the shipment of fluid milk by one or more of the cities and towns in the marketing area as defined in the order and has attempted to keep this list current. In this connection, the Market Administrator has carried on a great deal of correspondence with local health authorities.

165. The Market Administrator determined that from August 1 to December 16, 1937 the Cummings and Irona plants of New England Dairies, Inc. did not have the approval of any of the cities and towns in the marketing area as defined in the order for the shipment of fluid milk. The Market Administrator determined that from August 1 to December 31, 1937 the Hoosick plant of New England Dairies, Inc. did not have the approval of any of the cities and towns in the marketing area as defined in the order for the shipment of fluid milk.

166. The milk received at the Cummings and Irona plants of New England Dairies, Inc. was included in the computation of the blended price for each delivery period in August, 1937, but was excluded for all succeeding delivery periods to and including December 15, 1937. The milk received at the Hoosick plant of New England Dairies, Inc. was included in the computation of the blended price for each delivery period between August 1, 1937 and November 16, 1937, but was excluded for all succeeding delivery periods to and including December 31, 1937. The reason that such milk was excluded in the aforesaid periods was that the Market Administrator determined that the plants

were not approved by any city or town in the marketing area as defined in the order for the shipment of fluid milk.

167. The Market Administrator did not conclude until some time in September that the Irona and Cummings plants did not have the necessary approval and he did not conclude until some time in December that the Hoosick plant did not have the necessary approval. When the Market Administrator reached this conclusion he did not change the blended price which had been announced for the periods that the aforesaid plants had been included in the computation of the blended price, but he did adjust the accounts of New England Dairies, Inc. to exclude the milk received at those plants in each of the aforesaid delivery periods in the manner described in Finding 185 infra.

168. The municipal ordinances and regulations relating to the production, distribution and sale of milk which were introduced in evidence are attached to this report as Ex-

hibits 11 to 11e inclusive.

169. Attached to this report as Exhibits 12 to 12e inclusive are certificates and licenses which were introduced as evidence that certain handlers whose reports were used in the computation of the blended price in each delivery period between August 1, 1937 and December 31, 1937, possessed licenses to sell and deliver milk from each plant reported by those handlers to the Market Administrator, as required by law. In addition it was stipulated by the parties that at all times between August 1, 1937, and December 31, 1937, the following handlers were licensed by the city or town indicated below to distribute and sell fluid milk in the particular city or town.

> City of Melrose Marland Dairy, Inc.

Forbes Milk Company

Town of Arlington James A. Bustead Dairy

City of Peabody Anthony J. Conde Dairy City of Chelsea Eastland Farms, Inc.

Fairfield Farms

City of Lynn Putnam Brothers

Clinton W. Spear

West Lynn Creamery

Town of Wakefield .: Francis I. Bradford Dairy

Town of Reading Edson A. Porter Dairy

City of Newton Prospect Valley Farm

John A. Sellars

Town of Winches-: W. T. Boyd & Son ter

170. In computing the blended price in each of the delivery periods between August 1 and December 31, 1937, the Market Administrator did not exclude any milk reported by a handler, which was otherwise eligible for inclusion, on the ground that the handler had received the milk from a producer who did not have a current certificate of registration issued pursuant to the provisions of Chapter 94 of the General Laws of the Commonwealth of Massachusetts. At no time has the Market Administrator inspected any farms for the purpose of determining the manner in which milk was produced. The parties have stipulated certain facts with respect to the issuance of these certificates and the production and sale of milk by producers not possessing such certificates. If relevant and material in this connection, I find the facts stated in the following four paragraphs.

171. For some time prior to January 1, 1937, and continuing to a time after December 31, 1937, there were records at the State House in Boston, Massachusetts which purported to disclose the name and town in which the farm was located for each producer to whom a certificate under sections 16A-1 of chapter 94 of the General Laws of the Commonwealth of Massachusetts had been issued and the

date of expiration thereof, but it was a practical matter impossible for the Market Administrator to determine from such records and information as were available to him whether or not the various producers, whose milk was reported to him by the various handlers who submitted Form 15 reports for the delivery periods August 1, 1937 to December 31, 1937, did in fact hold the certificates of registration provided for in sections 16A-1 of chapter 94 of the General Laws of the Commonwealth of Massachusetts.

172. For some time prior to January 1, 1937, and continuing to a time after December 31, 1937, a substantial quantity of milk was delivered to handlers in the Boston market by producers who did not possess a certificate of registration as provided in sections 16A-1 of chapter 94 of the General Laws of the Commonwealth of Massachusetts, and some of the milk delivered was distributed and sold by the handlers in the Boston area.

173. Some of the milk reported to the Market Administrator by the aforesaid handlers was in fact delivered by producers who did not possess a certificate of registration as provided in section 16A-1 of chapter 94 of the General Laws of the Commonwealth of Massachusetts, and some of the milk so reported which was delivered by producers who did not hold the said certificates of registration, was in fact included in the computation of the blended price ir each delivery period between August 1, 1937 and December 31, 1937. If the Market Administrator had excluded from the computation of the blended price in the various delivery periods between August 1, 1937 and December 31, 1937 the milk which had been received by handlers from producers who did not possess the certificates of registration provided for in chapter 94 of the General Laws of the Commonwealth of Massachusetts, the effect of the exclusion of a part of that milk would have been to raise the blended price for the particular delivery period in which it had been included and the effect of the exclusion of another part of that milk would have been to lower the blended price for the particular delivery period in which the said milk had been included.

174. The Milk Regulation Board of the Commonwealth of Massachusetts has never exercised the powers vested in it by Section 16H of Chapter 94 of the General Laws of the Commonwealth of Massachusetts, to designate additional areas as qualified areas.

C. Western Cream Excluded

175. In each delivery period between August 1 and December 31, 1937, substantial amounts of cream were shipped into Boston from plants in middle western and southern The whole milk from which this cream was produced was not included by the Market Administrator in the computation of the blended price for any delivery period between August 1 and December 31, 1937. The Market Administrator did not send forms nor did he make any effort to obtain reports from the persons operating the aforesaid plants in the middle western and southern states, although he knew of this condition and knew that it had existed for a number of years. Detailed evidence was introduced as to only one such plant, which was located in Indiana. It appeared that each month in 1927 this plant shipped cream to Boston. The percentage of its milk receipts which were shipped to Boston in the form of cream varied from 35% in June to 97% in December.

176. None of the farmers whose milk comes to Boston in the form of cream from the middle western and southern states have certificates of registration issued pursuant to Massachusetts General Laws, Chapter 94, Section 16C. The persons owning the plants in the middle western and southern states were not licensed by any city or town in the marketing area to sell fluid milk. The plant as to which detailed evidence was introduced possessed only a license for emergency shipments of sweet cream. The Market Administrator did not inspect or cause any inspection to be made of conditions under which milk was produced or of the plants in these middle western or southern states from which cream came nor did he make any such inspection of any dairies or plants in New England.

177. Assuming all other factors remain constant, if the milk from which was obtained the cream which was shipped into Boston from plants in Middle Western and Southern States had been included in the computation of the blended price for any delivery period between August 1, 1937 and December 31, 1937, the blended price for that period would have been different from the blended price announced by the Administrator. However, the Market Administrator testified that it was impossible for him to say whether the blended price that would have been computed in such an event would have been higher or lower than the blended price announced. Conversely, assuming all other factors remain constant, the exclusion of the New England milk received in Boston as cream which was actually included in the computation of Blended prices would have again affected the blended prices computed by the Market Administrator, and in such case it affirmatively appears and I find that the blended price would have been higher and the bills to the defendants would have been less.

178. Article III, Section 2 of Order No. 4, as amended, provides in substance that milk classified as Class II milk on reports of handlers where sold to another handler or to a person not a handler who distributes or manufactures milk products shall be classified as Class I milk, unless the selling handler shall on or before the 15th day after the end of the delivery period during which such sale was made furnish proof satisfactory to the Market Administrator in support of Class II classification. In the period August 1, 1937 to September 30, 1937 Milton Cooperative Creamery reported sales to other handlers of Class II milk as shown upon the following tabulation and the Market Administrator received certificates respecting this milk on the dates set forth in the column headed Date Certificate Received by Administrator. These certificates were marked approved on the dates set forthan the column Date Proof Marked Accepted by Administrator. Where no date appears in such column or where the word 'none' appears there was no evidence that these certificates had ever been approved by the Administrator.

Proof With Respect to Class II Sales by Milton Cooperative Creamery to Other Handlers or to Persons Who Manufacture or Sell and Distribute Milk.

Period	Date Form 15 Received by Administrator	Class II Sales Reported on Schedule D	Handler or Person to Whom Sales Were Made	Date Certificate Received by Administrator	Date Certificate Date Proof Marked Received by Accepted by Administrator Administrator	d Remarks
Angust 1-15	August 21	548,256 303,620 4,760	8.256 Borden's 3,620 Green Mountain Dairy 4,760 Herlihy	August 24 August 24	September 2 September 2	
> 4>						Audit made in October and on Nov. 20 charged back to Milton as Class I because audit did not reveal it had been used as Class II.
., '		8,500	Milton Coop.			Audit made also of this amount and sudit showed it was used as Class II
Au . 3.31	Sentende		Giroux	none	none	Charged back to Milton as Class I
	S Lagrander	1,360 G 1,360 G	Herlihy Giroux Milton	none	none c	Charged back to Milton as Class I Erroneously reported on schedule D because it
		570,570. B. 287,385. G	Borden's Green Mountain	September 10 September 13 September 13 September 16	i ii e, tember 13	10

1			1 .		
Billed back to Milton as Class I Billed back to Milton as Class II Treated as Class II because it was not a sale but an interconness.		Billed back to Milton as	Billed back to Milton as	Class I Not a sale	
Billed bac Class I Billed bac Class I Treated as cause it w	transaction	Billed back	Billed back Class I	Class I Not a sale	
none			none		Datober 10
попе	September 29 October 1	October 13	none	October 8 October 16 October 8 October 16	October 19 October 19
19,405 Herliby 1,27 Giroux 2,550 Milton	529,970 Borden Milk Co. 289,000 Green Mountain Dairy Co. 305,380 A. J. Busterbolz	5,115 A. J. Rusterholz	Giroux	Milton Borden's Green Mt. Dairy	312,213 A. J. Rusterholz
	529,970 289,000 305,380	5,115 A. J. B.	1,275	170 514,718 281,095	312,213
					4
		September 16-30		35	

All this milk was included in the initial computation for the period involved as Class II milk, although subsequently charges were made to the handler as indicated in the column Remarks. No recomputation of the blended price for the period was made. If these amounts of milk had been included in the original computation for the pay period as Class I milk, the blended price would have been increased and the amount of the payment by the defendants for equalization or producer settlement account would have been decreased.

179. In the period August 1, 1937 to October 31, 1937 New England Dairies reported sales to other handlers of Class II milk as shown upon the following tabulation and the Market Administrator received certificates respecting this milk on the dates set forth in the column headed Date Certificate Received by Administrator. These certificates were marked approved on the dates set forth in the column Date Proof Marked Accepted by Administrator. Where no date appears in such column or where the word 'none' appears there was no evidence that these certificates had ever been approved by the Administrator.

Proof With Respect to Class II Sales by N.E.D. to Other Handlers or Persons Who Manufacture or Handle Milk.

	Date Form 15 Received by Administrator	Class II Sales on Schedule D	Name of Handler or Person to Whom Sale Was	Date Certificate Received by	Proof Marked	Remarks
August 1-15	August 24		Numerone	O TO THE O	Administrator	
•				September 8	* .	Schedule D not reported until
					· ·	all but 250 pounds of milk reported under
August 16-31	Sentember					Schedule D.
	R someodo	1,937,105	Numerous		September 13 September 17	
September 1-15	Santambas 09				October 4	•
	optember 23	1,532 2,162,851	Numerous	September 22	October 4	-
September 16-30	October 9			2		
Ostober 1 17				october 10		
-	October 24			November 2	November 3	
October 16-31 N	November 9					

All this milk was included in the initial computation for the period involved as Class II milk although subsequently charges were made to the handler as indicated in the column Remarks. No recomputation of the blended price for the period was made. If these amounts of milk had been included in the original computation for the pay period as Class I milk, the blended price would have been increased and the amount of the payment by the defendants for equalization or producer settlement account would have been decreased.

180. In the period August 1, 1937 to September 15, 1937 United Farmers Cooperative Creamery reported sales to other handlers of Class II milk as shown by the tabulation on page 185 and the Market Administrator received certificates respecting this milk on the dates set forth in the column headed Date Certificate Received by Administrator. These certificates were marked approved on the dates set forth in the column Date Proof Marked Accepted by Administrator. Where no date appears in such column or where the word 'none' appears there was no evidence that these certificates had ever been approved by the Administrator.

All this milk was included in the initial computation for the period involved as Class II milk although subsequently charges were made to the handler as indicated in the column Remarks. No recomputation of the blended price for the period was made. If these amounts of milk had been included in the original computation for the pay period as Class I milk, the blended price would have been increased and the amount of the payment by the defendants for equalization or producer settlement account would have been decreased. Whenever the Market Administrator finds upon an audit that milk has been misclassified he reclassifies it and makes an appropriate debit or credit to the producer settlement account of the handler involved.

Other	
2.	
Farmers	
Juited	
N C	
Sales 1	
E a	
to Class Who M	
Respect Persons	
5 5	
0	
Handlers or to Persons Who Manufacture or Soil and Director	

Period	Date Form 15 Received by Administrator	Class II sales Reported on Schedule D (pounds)	Handler or Person to Whom Sales Were Made	Date Certificate Received by Administrator	Proof Marked	Remarks
August 1-15	August 24	30,664 1,290 19,350 8,600	M. Winer M. Winer Mark Moody Dutchland		August 20 none September 8 September 3	Certificate of
		4,300	Maplewood	none	попе	proof was dated Aug. 21 Billed to United Farmers as
August 16-31	September 9	40,768 3,440 8,600 12,900 1,290	M. Winer Dutchland Dragone Mark Moody Patsy Vocci	September 10 September 11 September 13 September 11 September 11		
tember 1-15	September 1-15 September 24	8,170 6,762 860 9,400 30,698	Patsy Vocei Dragone Weiler Mark Moody M. Winer	September 30 September 30 September 30 September 30 November 8	not marked	

D. Handlers Excluded

181. The table on pages 188-189 shows the handlers which were excluded from the computation of the blended price in one or more of the delivery periods between August 1 and December 31, 1937, and indicates the reason for the exclusion.

182. Attached hereto as Exhibit 13 is a tabulation showing the handlers whose milk was included in the computation of the blended price in one or more of the delivery periods between August 1, 1937, and December 31, 1937, showing

this inclusion by periods and stations.

183. The table on pages 190-191 shows the total amount of milk reported by handlers during each delivery period from August 1, 1937, to and including December 31, 1937, which was not included in the price calculation. It also shows how much of the milk excluded in each period was excluded because it was reported too late to be included in the price calculation and how much of it was excluded because the reporting handler had not paid the net debit balance outstanding in the handler's producer settlement account which remained on the Market Administrator's books after making the entries for the delivery period next preceding but one.

X. Method of Making Adjustments to Eliminate Milk Previously Included in a Handler's Account

184. Whenever the Market Administrator discovered that there had been included in a handler's account for any preceding delivery periods milk reported as received at a plant which was not eligible to participate in the marketing plan established in the order, he adjusted the handler's accounts to exclude that milk. The adjustment was made in this way: The total amount of milk received at that plant which was reported as Class I was multiplied by the applicable Class I price and the total amount of milk received at that plant which was reported as Class II was multiplied by the applicable Class II price. Adding the value of the Class I milk to the value of the Class II milk the Market Administrator obtained the total value of all milk reported as received at the particular plant. The Market Administrator then computed with respect to the milk reported from these stations the net amount of freight and outside market differentials which had been included in the handler's original account. This net amount was then added to or deducted from the total value of the milk, depending on whether or not the net differentials had been added or deducted in the original account. The Market Administrator then deducted the figure thus obtained from the total amount which the handler had originally been credited with having paid his producers at the particular plant. resulting balance was then debited or credited to the handler's account so that it would offset the debit or credit.originally allowed and an offsetting credit or debit was made in the adjustment reserve account on the Market Administrator's books.

LIST OF HANDLERS WHO ON

Albemarle Fari

seorge E. Ant

Segrade Dair

C. Black & S

ohn J. Corker

Handlers

Included

The Facts Which Prescribed There Inclusion ere Not August. J. McAdoo N N N N N N N N N N N N N N N N N N	Te Not 1.15 14.31 14.31	188	Master's Report
The Facts which Preciring Their Inclusion The Facts which Preciring Their Inclusion Their Not the Fact of their Inclusion	Te Not Te Not	nber	NNNNNNNNNNNNNNNNNNNNNNNNNNNNNNNNNNNNNN
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re Not lation J. McAdoo J. McAdoo Dairy our	Te Not lation J. McAdoo on odland odland our	11 -	
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rice (Price (Dairy Rodden Parm Parm Parm Parm Parm Parm Parm Parm		Any I	illk Co., butch gh F. E. airview airview Nelson no. Dello, no.
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William A. McA

Mason's Creame Meadowbrook F

Pozold Creamer Pinehurst Dairy

'rank MacQuar William J. Mar

Frank Lansille loward R. Lef

aroe & Burr

Riverside Dairies

M. J. Quinn

lage L. Roberts Noel H. St. Ger

Seymour Dairy Rose Creamery

alley \

N

Handlers Whose Reports were Included in Some Price Calculations and Excluded in	The same
Sos	

David Buttrick Co.	NP	NP	NP NP	NP . NP	
Caledonia County Co-operative, Assn., Inc.			NP NP	NP NP	
George L. Chapin		NP.	N NP	NP NP	
Anthony J. Conde	A N	NP	NP NP	N	
Dear De Creamery, Inc.	4	Z			
Dean Dairy		NP	NP NP		
Pastland Faring, Inc.					
Elm Graine Day	N		HNHN	NH NH	
Painfold To	N.D				
Paireign Change T		N.	NP NP	NP NP	
Melcolis D. E. D.	· ND	2	N. N.	N	
Forbes Milt Comment		Ž.	NP NP.	NP NP	
Green Teller Campany			N	N	
H P Hood & C.	· ND	2	N NP	N	
Kingston D. Sons, Inc.	div.	N	N N	NP	
English Bros., Inc.	AN .	NP	NP NP	NP NP	
Long D. Knapp		Z.	N	NP NP	
Lang Bros., Inc.	4	Z	NP N	N	
Lyndonville Creamery Assn.	Z .	Z	N. N.		
T w Versally, Inc.		NP	NP NP	NP NP	1
M.C. Ale Adams & Bros., Inc.		HB	HB HB	HR HR	-
Mountain View Co.	N D	NP	NP NP	NP NP	
New Fineland Creamery, A. J. Robinson	N	Z	N		
Noble's Milk Commercy Co.	d.N.	2,5	N NP	N. NP	
Nirway Chesmery	· NP	N. A.	NP NP	N NP	
Ecson A. Porter		12	NP. NP	NP NP	
J. B. Prescott Co	·	. 2	Z	Z Z	-
Prospect Valley Farm	. NP	NP	N N N	N	
John A. Sellars	NP	NP	NP NP	NP NP	
Sever Oaks Dairy Co.	Z	Z	N. N.	NP NP	
Clinton W. Spear	NP.	NP	ND	N NP	
H. L. Stone Dairy, Inc.	NP NP	NP NP NP	NP NP	NP NP	
Weiler-Sterling Farms Co.	• }	Z	NP NP	NP NP	
West Lynn Creamery	z.	NP	NP N	N N N	3
White Bern Milk Co.		Z	N	N N	
Whiting Milk Co., Inc.	N.	NP	NP NP	dN N	
THE MILE COMPANY	AN .	Z	Z	NP NP	
N No complete fenor process in the state.	d an	NP	NP NP.	NP NP	10
The second of the second secon	HID - Konomean				ł

IIB — Reported all milk received from other handlers, none received NH — Did not report any milk kandled which was sold as milk or cream in the Marketing Area. feport received in time for inclusion in computation putation of blended price, in liquidation of debit balance for equalization the delivery period bext preceding but one. MARKET ADMINISTRATOR — GREATER
Amount of Milk reported by Handlers up
in the Calculation of the Blended
August 1 and De-

		Total amount of milk reported		Amount of milk included in the price calculation		Total amount of but not in- price calcu-
1937	(4)	Net Class I	Class II	Net Class I	Class II	Net Class I
August	1.15	24,856,840	18,120,234	22,917,482	17,893,189	1,939,358
1.	16-31	25,933,885	18,663,073 .	. 24,214,758	18,408,423	1,719,127
September	1-15	22,933,797	17,656,175	6,347,588	12,620,656	16,586,209
	16-30	22,218,431	18,286,207	5,646,952	13,078,261	16,571,479
October	1-15	22,550,302	17,225,394	5,702,205	11,832,970	16,848,097
	16-31	24,670,237	13,229,596	6,765,991	9,055,621	17,904,246
November	1-15	. 23,782,848	7,698,389	7,570,563	5,216,103	16,212,285
	16-30	23,088,163	7,716,502	7,484,730	4,933,235	15,603,433
December	1.15	22,578,728	8,846,948	6,910,531	5,973,405	15,668,197
	16-31	22,718,615	11,690,503	6,887,403	7,394,965	15,831,212
Totals		235,331,846	139,133,021	100,448,203	106,406,828	134,883,643

Boston Marketing Area to April 8, 1938, and Milk not included Price for each period between cember 31; 1937

> Milk reported by handlers but not included in the price calculation because handler had not paid the net debit balance for equalization after making the entry for the next preceding period but one.

cluded in the lation	precedir	who had a debit he period next but one	By handlers wh billing in the preceding	period news	the price	by handlers but be included in calculation period
	Net Class I	Class II	Net Class I	· Class II ·	Net, Class I	Class II
227,045 254,650 5,035,519 5,207,946 5,392,424 4,173,975 2,482,986 2,783,267 2,873,543 4,295,538	14,938,106 13,760,939 13,872,394 14,485,838 12,928,777 13,368,572 13,299,031 13,882,683	4,819,487 4,653,420 4,784,981 3,621,979 2,200,295 2,574,315 2,359,503 3,884,528	8,763 	1,299	1,939,358 1,719,127 1,648,103 2,801,777 2,975,703 3,418,408 3,283,508 2,234,861 2,081,136	227,045 254,650 215,832 553,227 607,443 551,996 281,991 208,952 326,133
2,726,193	110,586,340	28,898,708	981,146	377,900	23,466,157	3,449,585

185. The following table shows the adjustments which were made by the Market Administrator to exclude from the accounts of New England Dairies, Inc., the plants Hiram, Cummings, Irona, and Hoosick and the adjustment made to exclude from the accounts of Milton Cooperative Dairy Corporation the Swanton plant.

	Aug. 1-15	Aug. 16-31
New England Dairies, Inc.		
Original producer settlement credit	\$29,517.01	\$31,251.60
Dobit adiantaria de la	* *	401,201.00
Debit adjustment for the Cummings, Irona, and		
. Hiram plants	6,264.98 Dr.	6,165.34 Dr.
Credit adjustment for the Hoosick plant ¹		
Net amount	. 9.18 Cr.	189.64 Cr.
	\$23,261.21	\$25,275.90
Milton Cooperative Dairy Cor- poration		
Original equalization credit Debit adjustment for	\$6,117.97	\$5,724.42
Swanton plant	2,170.03	2,096.89 Dr.
Net amount	\$3,947.94	\$3,627.53

Debit adjustments were also made for this plant for the periods September I through Nevember 15, 1935, amounting to a total of \$700.72.

186. Adjustments made in the manner described in Findings 184 and 185 supra do not affect the blended price for the delivery periods to which they apply. However, such adjustments do affect the cash reserve account and hence the blended price for the delivery period in which the adjusted cash reserve account is disbursed. Thus, if as a result of such an adjustment, the Market Administrator debits the account of a handler and the amount of that debit is received by the Market Administrator either as a payment or by an offset against some credit to the handler, the amount of the debit is credited to the Market Administrator's cash reserve account and where there is substantial compliance with the order the amount of that credit,

together with the amount of all similar credits with respect to the same delivery period, would be prorated by the Market Administrator in the shape of a appropriate addition to the blended price announced by the Market

Administrator in some subsequent delivery period.

187. All producers delivering milk in the period in which the proration referred to in Finding 186 supra is made, share in the proration, which is made on a hundredweight basis, in the same proportion as their deliveries of milk in that period. The producers not classified as new producers who delivered no milk in the period in which the milk in question was erroneously included in the computation of the blended price but delivered milk in the period in which the pro rata distribution is made share in the proration. A producer who delivered milk in the period in which the milk in question was erroneously included in the computation of the blended price but delivered no milk in the period in which the pro rata distribution was made would get no share of the adjustment.

188. The adjustments for the two delivery periods in August, as shown in the tabulation contained in Finding 185 supra, although made in September, have not affected the blended price in any delivery period to and including December 31, 1937. The explanation for this is that the accounts for the two delivery periods in August have not been liquidated. The Market Administrator testified that if he is subsequently able to liquidate the accounts for those delivery periods, he will have to ask the Secretary of Agriculture for instructions as to what to do with the benefit of the adjustments which he made with respect to the Cummings, Hiram, and Irona plants of New England Dairies.

XI. Effect of Exclusion and Inclusion of Milk

A. On the Blended Price

189. There is a relationship between the amount of Class II milk included in the computation of the blended price

and the level of the blended price. An increase in the amount of Class II milk included in the computation of the price tends to decrease the level of the blended price.

B. On the Equalization Payments

190. If the blended price in any delivery period had been higher than the blended price originally computed, the amount debited to any handler in the producer settlement account would have been smaller than the amount originally so debited.

C. On the Bills Rendered to Handlers

191. The level of the blended price does not affect in any way the total charge to the handler as computed by the Market Administrator on the basis of the prices fixed in the order for the milk which he receives from producers in a particular delivery period. The blended price is not used in computing such charge. In other words, neither the exclusion nor inclusion of another handler's milk from the computation of the blended price nor the level of the blended price affects in any way the figures which appear on the bill to the handler opposite the heading "Total milk received from producers and value thereof;" those factors affect only the figures on that part of the bill headed "Credits to your producer settlement account for amounts payable to your producers for 3.7 milk, etc." and the "Balance due Administrator for produced settlement".

PART V

THE REFERENDUM ON THE AMENDMENTS

.192. For the purpose of ascertaining whether the issuance of the amendments to Order No. 4 was approved or favored by producers a referendum was conducted on July 16 and 17, 1937 (See § 8c(19) of the Act). The referendum was under the immediate supervision of R. D. Aplin, Senior Marketing Specialist in the Department of Agriculture. On July 12, 1937, Mr. Aplin sent the following letter, together with a list of polling places and a copy of the proposed order, to approximately 7,900 producers who were not, according to the records which Mr. Aplin had, members of any cooperative association:

UNITED STATES DEPARTMENT OF AGRICULTURE Room 407, Post Office Bldg., Boston, Mass.

July 12, 1937.

Dear Sir:

There is enclosed a copy of a compilation of order No. 4 regulating the handling of milk in the Greater Boston marketing area, which incorporates certain

proposed amendments to that order.

The proposed amendments will not be issued by the Secretary of Agriculture, and the provisions of Order No. 4 relating to prices, pooling, and payments to producers will not become effective, unless the issuance of these amendments is approved by at least two-thirds of the producers producing milk for sale in the Greater Boston marketing area during the month of May 1937, as evidenced by the votes of the producers who participate in the referendum.

Enclosed is a list of the times and places at which you may cast a ballot to show your approval or disapproval of these amendments. You may visit whichever polling place is most convenient to you. When you go there to vote, it will be necessary for you to sign a

register book with your name and initials identically the same as they appear on the envelope in which this letter come to you.

The questions which will appear on the ballot will be

as follows:

1. How much milk did you deliver during the month of May 1937 to a handler (Boston dealer)?

2. What is the name of the handler to whom your

milk was delivered?

3. What is the location of the handler's plant to which your milk was delivered in May 1937?

4. What is the name of the county and state in which is located the farm where the above milk was produced?

5. Do you approve the issuance of the amendments to Order No. 4 which would make that order read as shown in the attached compilation thereof, released by the United States Department of Agriculture under date of July 9, 1937?

Your vote on question No. 5 will indicate your approval or disapproval of the amendments to Order No. 4 which are contained in the enclosed compilation, referred to on the ballot.

At the polling place you will mark your ballot in secret, fold and place it in a sealed can which will not be opened until the ballots are counted at Boston. The vote of each producer will be kept strictly confidential, under rigid government regulations.

Very truly yours, RICHARD D. APLIN

Enclosure.

Senior Marketing Specialist.

193. The letter giving notice of the referendum was not sent to individual members of cooperative organizations, but each association was notified by a letter sent July 12, 1937, in the following form:

July 12, 1937

Gentlemen:

There is enclosed a copy of a compilation of Order No. 4 regulating the handling of milk in the Greater Boston Marketing Area which incorporates certain proposed amendments to that Order.

The proposed amendments will not be issued by the Secretary of Agriculture, and the provisions of Order No. 4 relating to prices, pooling, and payments to producers will not become effective unless the issuance of these amendments is approved by at least two-thirds of the producers producing milk for sale in the Greater Boston Marketing Area during the month of May 1937, as evidenced by the votes of the producers who participate in the referendum.

If your association wishes to express the approval or disapproval of your members upon the proposed amendments it will be necessary for you to mark and return the enclosed ballot. The ballot must be mailed not later than Saturday, July 17, to Richard D. Aplin, Senior Marketing Specialist, Room 407, Post Office Building, Boston, Massachusetts.

Very truly yours,

/S/ RICHARD D. APLIN Senior Marketing Specialist

RF Enc.

194. Certain other steps were taken to call the referendum to the attention of the producers. An announcement of the referendum was given to the Associated Press for release to the newspapers in New England and this notice was published in a number of papers. Announcements were also sent to certain other magazines and papers and announcements were made over the radio. In addition there were thirty-three public meetings held throughout the milkshed in the week preceding the election at which announcements were made with respect to the referendum.

195. The votes of individual producers who were not members of any cooperative association were taken by ballots cast in person by the producer at polling places located throughout the milkshed. They were not permitted to vote by proxy or by mail. The votes on behalf of producers who were members of cooperative associations, with one exception, were taken by each cooperative association mailing to Mr. Aplin a single ballot covering the votes for all its members. The forms of the individual and of the cooperative ballots are hereto annexed as Exhibits 14 and 15. One cooperative, the Caledonia County Cooperative Association, elected not to vote on behalf of its members, and fifty-three. of its members voted as individuals. Except in the case of three cooperatives, Mr. Aplia at no time obtained or kept any record of the names of the individual producers for whom the cooperative associations voted as a unit, although from an investigation of the records of the cooperatives he determined and kept a record of the number of votes which they were qualified to cast. By checking the individual ballots against information in his possession, Aplin was able to eliminate and did eliminate ballots cast by individual producers for whom a cooperative had voted as a unit. The total number of votes thus determined to be qualified to be cast by cooperative associations (exclusive of Caledonia County Cooperative Association) was 8,437.

196. In each case the ballot of the cooperative was signed with the name of the association and under that was the signature of the officer signing and his title. Mr. Aplin made no investigation to determine whether the person signing the ballot held the office he claimed to hold. Neither did Mr. Aplin investigate the by-laws of the association to determine what powers they had to vote for their members.

197. On July 14, 1937, the respective boards of directors of New England Milk Producers Association and New England Dairies, Inc. enacted the following resolution:

That this Association express its approval of the proposed amendments to the federal order No. 4 regulating

the marketing of milk in the greater Boston market, and that the president be and he hereby is authorized and directed to signify the approval of this Association in writing to the Agricultural Adjustment Administration.

or the New England Milk Producers Association of their individual producer members on this matter of the approval of the amendment, nor was any meeting of their individual members held in this connection. No proxies were obtained from the individual members of either association. No subsequent approval, either oral or written, was obtained from the individual members of either association of the action of the respective boards of directors in authorizing the presidents to cast a ballot of the association in favor of the proposed amendment to Order No. 4.

199. The following table shows the results of the referendum:

	For the Amendments	Against	Total
Individual Producers Cooperative Associations	1,102 7,265	1,954 1,172	3,056 8,437
Total	8,367	3,126	11,493

200. All of these cooperative associations except Bellows Falls Cooperative Creamery voted in favor of the amendments; the vote of Bellows Falls Cooperative Creamery was cast in the negative. The following tabulations show the number of votes cast by each cooperative association which voted as a unit for its members and the stations at which the producers for whom the association voted delivered their milk:

BALLOTS OF CO-OPERATIVE ASSOCIATIONS

	Number of votes Counted
Independent Co-operatives:	*
Bellows Falls Co-op. Creamery	1,172
Cabot Farmers' Co-op. Creamery Co.	187
Kenduskeag Valley Creamery	40
Manchester Dairy, Inc.	174
Milton Co-op. Dairy Corp.	706
United Dairies, Inc.	137
United Farmers' Co-op. Creamery Assn.	1,710
Total—Independent Co-operatives	4,126
New England Dairies, Inc. Co-operatives:	
Bethel Co-operative Creamery, Inc.	162
Burlington Co-operative Creamery Assn. Inc.	. 51
Clyde Valley Co-operative Creamery Co., Inc.	122
Grand Isle County Co-operative Creamery.	. 122
Association, Inc.	141
Granite City Co-operative Creamery Assn. Inc	. 76
Mt. Mansfield Co-operative Creamery & Gra	in
Association	134
Richmond Co-operative Association, Inc.	314
St. Albans Co-operative Creamery, Inc.	250
Shelburne Co-operative Creamery Company	178
Tunbridge Co-operative Creamery, Inc.	45
White River Valley Co-operative Creamery Association	*
	77
New England Milk Producers Association	2,196
New England Dairies, Inc.	565
Total-New England Dairies, Inc. Co-operatives	4,311
TOTAL-ALL CO-OPERATIVE ASSOCIATIONS	8,437
	. =

New England Milk Producers Association Ballots by Plants

	Number of Vot Counted	tes
New England Dairies, Inc., Plants:	- Camerou	_
Dradford	119	
Cambridge Junction	38	*
Chelsea	53	
Concord		
Craftsbury	103	
Detroit	26	
E. Berkshire	51	
Enosburg Falls	97	
Essex Center	132	
Fairlee and W. Fairlee	37	
Greensboro	120	
Hough's Crossing	43	
1 Indoes	107	
Morrisville	61	
Newbury	28	
Oakland	. 54	
Orleans and Irasburg	182	
Salisbury	117	
Shoreham	69.	
Union	74	
	86	
Total-New Fugland Dairies, Inc., Plants	1,597	
New England Dairies, Inc., Affiliated Co-operative Plants: Clyde Valley Co-operative Creamery Co., Inc. I Clyde Valley Co-operative Creamery Co., Inc. Island Pond Granite City Co-operative Creamery Ass'n. Inc. St. Albans Co-operative Creamery, Inc.	Derby 28	
Total—Affiliated Co-operatives	. 7	
Other Handland Di	56	
Other Handlers' Plants:		
W. T. Boyd & Sons, Inc.	80	
Deerfoot Farms Co.	34	
Lyndonville Creamery Assn.	38	
Talland Dairy Co	25	
J. B. Prescott Co.		
Shawsheen Dairy, Inc.	109	
Stranord Creamery Company	6.	
	43	
The same Co.	107	
TILLS BIVER (TRANSPORT		
United Dairies System	27)	
United Dairies System Total—Other Handlers' Plants	74	
TILLS BIVER (TRANSPORT	74	

New England Dairies, Inc., Ballots by Plants

1 1-	Number of Votes Counted
Clyde Valley Co-operative Creamery Co., Inc., Island Pond	. 133
Mt. Mansfield Co-operative Creamery & Grain Asciation	115
New England Dairies, Inc.,-Concord	194
New England Dairies, Inc.,-North Haverhill	123
TOTAL—NEW ENGLAND DAIRIES, INC.	565

201. Mr. Aplin also counted the votes according to volume. The result of this count was as follows:

57,573,173 pounds of milk in favor of the amendment 24,362,569 pounds of milk opposed to the amendment

The volume figures were not announced by the Department of Agriculture and were not used for the purpose of determining whether or not the amendments should be issued. The announcement which was made by the Department, on August 11, 1937, stated the result in terms of the number of producers voting for and against the amendment.

202. The producers who were permitted to vote and for whom cooperatives were permitted to cast votes were those determined by Mr. Aplin to have delivered milk to a station in the month of May 1937 which station, in that month, shipped some part of its products to the marketing area as milk or cream and was approved by one or more of the health authorities in the marketing area. See paragraph 30 of this report.

203. In determining producers eligible to vote, a plant which shipped any part of its product to the Boston marketing area either as milk or as cream was considered as having shipped to the Boston marketing area—the fact that the greater percentage of the plant's products may have gone elsewhere made no difference. No attempt was made to de-

termine whether milk or cream was shipped into the marketing area was consumed there or shipped elsewhere.

204. Mr. Aplin made no attempt to determine whether any of the persons voting either as individuals or through cooperative associations had certificates of registration issued by the Division of Dairying and Animal Husbandry of the Department of Agriculture of the Commonwealth of Massachusetts. No person was excluded from participation in the referendum because he did not possess such a certificate and no vote cast by a cooperative was excluded because the producer for whom the vote was cast did not have such a certificate.

205. During the period from May 1, 1937, to and including the date upon which the votes cast in the referendum on the amendments to Order No. 4 were counted, it was, as a practical matter, impossible for the person in charge of such referendum to determine whether or not the producers whose names were reported to him as having produced milk for sale and which was sold in the Boston market in the month of May, 1937, did in fact hold certificates of registration as provided in sections 16A-I of chapter 94 of the General Laws of the Commonwealth of Massachusetts in effect for the said month of May, 1937. A substantial number of producers not in excess of twenty-five per cent of those voting in the referendum, who did not in fact hold the aforesaid certificates of registration, voted as individuals or were voted for by cooperatives in the referendum on the amendments to Order No. 4. The aforesaid producers who did not hold certificates of registration delivered their milk to plants of handlers who were licensed under General Laws, Chapter 94, Section 40, to distribute and sell milk from said plants in one or more cities and towns in the marketing area. Such licenses were licenses to sell and distribute milk according to law and the regulations of the appropriate municipal health officers. Further facts concerning certificates of registration and the possession thereof by producers delivering to handlers shipping milk to the marketing area are found above in paragraphs 171 to 174 inclusive.

206. Twenty-two hundred affirmative votes were cast by cooperative associations for producers delivering to plants which shipped only cream into the marketing area during the month of May 1937. If these producers were ineligible to vote, and if these votes should be eliminated and no other votes were eliminated the vote on the referendum would not have carried and the Order would not have become effective.

207. Substantial amounts of cream were shipped into Boston in May 1937 from states in the south and middle west. These shipments were made from plants in those areas and the cream was obtained from milk produced in those areas. None of these plants were approved for the distribution and sale of fluid milk by any city or town in the marketing area. The farmers delivering milk to these plants did not have certificates of registration issued pursuant to Massachusetts General Laws, Chapter 94, Section 16(c). This situation was known to Mr. Aplin. For further findings regarding these southern and midwestern dealers and producers see Paragraph 176.

208. Detailed evidence was introduced as to one such plant, which was located in Indiana. That plant had 1,371 producers delivering milk to it in May 1937, and in that month it shipped 41% of its milk receipts to Boston in the form of cream. Each month during the year 1937 there were substantial shipments of cream from this station to Boston, and in each month except March, April, May, and June the majority of the output of the station came to Boston. If these producers delivering to this plant had been eligible to vote and had voted in the negative, the referendum would not have carried and the Order would not have become effective.

209. No milk producers in the middle west or the south voted in the referendum. No announcement as to the referendum was made in the middle west or the south. No polling places were established in the south or middle west. All producers whose votes were counted delivered to stations located either in Maine, New Hampshire, Vermont, Massachusetts, or New York.

210. In the referendum 2,266 votes counted in favor of the amendments were cast by cooperatives for producers delivering to stations which shipped less than 50% of their receipts to the greater Boston marketing area in the month of May 1937, and five of these stations, casting a total of 723 votes, shipped less than 17% of their receipts to the marketing area in that period. One thousand three hundred and forty-nine votes were cast by cooperatives in favor of the amendment for producers delivering to stations shipping 41% or less of their receipts to Boston.

211. If the 2,266 producers referred to in the preceding paragraph were ineligible to vote and their votes should be eliminated and no other votes were eliminated, the vote on the referendum would not have carried and the amendment to Order No. 4 would not have become effective.

212. In May 1937 13,175,850 pounds of milk came to Boston in the form of cream from plants located in states in the Middle West and Midsouth, and this volume of milk, had it voted in the negative on the referendum, would have resulted in the referendum being lost on a volume count and the Order would not have become effective. Furthermore, at least 6,374,992 pounds of the milk delivered in May 1937 by the producers whose votes were counted by Aplin did not come to Boston either in the form of milk or cream, but went to some other market entirely.

THE BASE PERIOD AND PARITY PRICES

213. The term parity price is used to describe a price that will give an agricultural commodity a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of such agricultural commodity during a stated base period. A parity price can be determined by a computation involving (a) the price paid to farmers for the agricultural commodity during the base period and (b) an appropriate series of index numbers of prices paid by farmers for articles bought, covering both the base period and the period for which the parity price is to be computed, here-

after referred to as the instant period. This computation, hereafter referred to as a parity computation, consists in determining, first, the percentage change between the base period and the instant period in the index of prices paid by farmers for articles bought and, second, the price paid to farmers for the agricultural commodity which reflects the same percentage change from the base period, such price being the parity price. In other words, the series of index numbers of prices paid by farmers for articles bought is adjusted so that 100 equals the average of the index numbers during the base period, and the parity price is computed by multiplying the price paid to farmers for the agricultural commodity during the base period by the index number for the instant period for articles bought by farmers.

214. On January 25, 1936, the Secretary of Agriculture

made the following finding:

By virtue of the authority vested in the Secretary of Agriculture by the Agricultural Adjustment Act, approved May 12, 1933, as amended, the Secretary of Agriculture does hereby find and proclaim that in connection with the execution of a marketing agreement and the issuance of an order regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area, the purchasing power of such milk during the base period August 1909 to July 1914 cannot be satisfactorily determined from available statistics in the Department of Agriculture, but that the purchasing power of such milk can be satisfactorily determined from available statistics in the Department of Agriculture for the period August 1919 to July 1929; and the period August 1919 to July 1929 is hereby found and proclaimed to be the base period to be used in connection with ascertaining the purchasing power of milk handled in the Greater Boston, Massachusetts, Marketing Area, for the purpose of the execution of a marketing agreement and the issuance of an order regulating the handling of said milk in that area.

215. Before and since January 25, 1936, there was in the statistics of the Department of Agriculture available to the Secretary a series of index numbers of prices of articles bought by farmers currently and during each year back to and including 1910. This series, hereafter referred to as the national index of articles bought, is commonly used by agricultural economists and statisticians and is substantially the same one upon which is based all of the evidence which was submitted to the Secretary at public hearings in justification of the prices established by both the original Order No. 4 and amended Order No. 4. Attached hereto as Exhibit 16 is a tabulation by years of the national index for the years 1910 to 1936, inclusive, extended as to the index for all commodities bought by months for the year 1937. Also attached hereto as Exhibit 17 is a pamphlet published by the United States Department of Agriculture entitled "Index Numbers of Prices Paid by Farmers for Commodities" which gives further details as to this index. This is a nation-wide index.

216. In February 1937, after the original finding on the base period of January 25, 1936, but before the promulgation of the amendment to Order No. 4 on July 28, 1937, there was published in the Department of Agriculture a pamphlet entitled "Wholesale Prices Received by Farmers for Whole Milk 1909-1936," a copy of which is annexed as Exhibit 18. This document has been in the files of the Department of Agriculture since February 1937.

217. The prices appearing in the pamphlet entitled "Wholesale Prices Received by Farmers for Whole Milk 1909-1936" are not on a classified basis but represent the aggregate price received by farmers for the whole milk

sold by them for the years in question,

218. Under the provisions of the Agricultural Adjustment Act of 1933, the Secretary, effective November 3, 1933, entered into a marketing agreement and, in connection therewith, issued a license governing the handling of milk in the greater Boston market. In so doing he found as follows:

Whereas, it appears after due consideration that this is a marketing agreement between the Secretary and persons engaged in the handling of milk and its products within the meaning of said section in the current of interstate commerce; and

Whereas, it appears after due consideration that the aforesaid marketing agreement will tend to effectuate the policy of Congress set forth in section 2 of the act in that such marketing agreement will.

- (a) Establish and maintain such balance between the production of milk in the New England milk shed and consumption of such milk and its products in the Greater Boston market, and such marketing conditions therefor as will reestablish prices to the producers thereof at a level that will give such agricultural commodity a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of such agricultural commodity in the base period as defined in section 2 of the act; and
- (b) Approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is possible in view of the current consumptive demand in domestic and foreign markets; and
- (c) Protect the consumer's interest by retaining the production of such agricultural commodity at such level as will not increase the percentage of the consumer's retail cost for such agricultural commodity or products derived therefrom which is returned to the farmer above the percentage which was returned to the farmer in the pre-war period August 1909-July 1914; and

Section 2 of the Agricultural Adjustment Act of 1933 was as follows:

It is hereby declared to be the policy of Congress-

(1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909-July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919-July 1929.

- (2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.
- (3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909-July 1914.
- 219. Order No. 4 as amended provides for a marketwide equalization pool under which a blended price is paid all producers computed on the basis of the Class I and Class II prices applied to the respective amounts of Class I and Class II milk.
- 220. Under Order No. 4 as amended the Class II price and the percentage of surplus are the two variable factors in computing the blended price. Assuming that other factors remain constant, decline in the Class II price causes a corresponding decline in the blended price, while a decline in the percentage of surplus causes a rise in the blended price.
- 221. The formula fixed in Order No. 4 as amended for determining the price of Class II milk has as its two basic factors the price of cream in the Boston market and the price of casein as quoted at New York. Casein is a skim milk

product and the price of it gives a representative value for skim milk. The Class I price as fixed in Order No. 4 as amended is in no way used in computing the Class II price.

*222. There is no provision in the Order fixing or controlling the Boston price of cream or the New York price of casein, on which the Class II price of the Order depends. They are fixed by open competition of cream and casein product in various sections of the United States, and they do actually vary from time to time, thus causing corresponding variations in the Class II price under the Order and in the blended price which the farmer receives.

223. There is no provision in Order No. 4 as amended which fixes a percentage of surplus in the market or which tends to control the amount of milk in the milkshed.

224. Increases in the price to producers in the Boston Milk Shed tend to stimulate the production of milk by producers in the milkshed and at times to draw new producers into the Boston market. From November, 1933, to August, 1936, there was an increase in the total volume of milk produced for the Boston market.

225. The percent of surplus actually varies from year to year and in some cases the variation is substantial. The yearly average percentage of Class II milk (surplus) of the New England Milk Producers Association for the years 1919 to 1932 inclusive and for New England Dairies Inc. for the years 1933 to 1936 inclusive is shown by the following table:

THE AVERAGE PERCENTAGE OF CLASS II MILK (SURPLUS) IN THE GREATER BOSTON MARKET BY YEARS

NEW ENGLAND MILK PRODUCERS' ASS'N.

AND

NEW ENGLAND DAIRIES, INC.

Year					Yearly Average
1919					32.8
1920					32.0
1921		* :		,	39.0
1922					39.6
1923					42.9
1924					42.6
1925					45.4
1926					48.0
1927			•		47.6
1928					
1929			1		44.6
1930					42.5
1931			1	1 .	47.3
1932					34.0
1933			1		27.4
1934	•		: \	•	31.4
1935			•		40.0
1936			1		50.1
1930			/.		52 .8

226. The prices that farmers pay for articles which they buy vary from year to year and from month to month. There is no provision in the Order fixing or controlling such prices. There is no provision in the Order which causes the blended price to vary as the prices that farmers pay for articles they buy vary.

227. I find that although the Class I price under the order is fixed, but the Class II price is not fixed, and the percentage of surplus is not fixed, the mere fact that the Class I price is fixed does not tend to cause the percentage of surplus in 1937 to approach the percentage of surplus in the post-war period.

228. The following groups of findings are made with respect to the specific cases designated in the heading of each group, and are not applicable to any cases other than those designated in such heading.

UNITED STATES ET AL. V. H. P. HOOD & SONS, INC. AND NOBLE'S MILK COMPANY, No. 4519

The Defendants

229. The defendant H. P. Hood & Sons, Inc. is a corporation organized under the laws of the Commonwealth of Massachusetts and having its principal place of business. at 500 Rutherford Avenue, Boston, in said Commonwealth. It purchases milk from over three thousand producers located in the States of Maine, New Hampshire, Vermont, Massachusetts, and New York. A portion of the milk so purchased is transported to the distributing plant of the defendant corporation in Boston in interstate commèrce, and is there processed and then distributed and sold by the defendant in the Boston marketing area. Some of the milk purchased by the defendant corporation H. P. Hood & Sons, Inc. is processed at its country stations located elsewhere than in Boston and the products are then shipped into Boston. H. P. Hood & Sons, Inc. operates receiving stations at Auburn, West Farmington, Unity, and Belfast, all in the State of Maine; at Colebrook, West Canaan, and Lancaster, all in the State of New Hampshire; at Barnett, Plainfield, Barton, Hardwick, Orleans, Newport, Fairfield, St. Albans, and Sheldon Junction, all in the State of Vermont; and at Eagle Bridge and Salem in the State of New York. H. P. Hood & Sons, Inc. also purchases milk from producers located within the Commonwealth of Massachusetts and processes and distributes and sells the milk of these producers in the Boston marketing area. In the delivery period August 1-15, 1937, H. P. Hood & Sons, Inc. purchased milk from a total of 3,186 producers. Of this total, 902 delivered to its plants located in the State of Maine, 473 to its plants located in the State of New York, 1,367 to its plants located in the State of Vermont, 371 to its plants located in the State of New Hampshire, and 73 to its Charlestown plant in the Commonwealth of Massachusetts. H. P. Hood & Sons, Inc. also from time to time purchases

milk from other handlers and distributes and sells such milk in the Boston marketing area.

230. The following table shows the amounts of milk purchased by the Hood Company from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk:

H. P. Hood & Sons, Inc.

Receipts of Milk (in pounds)

. Peri	od	From Producers	From Own Farm Production	From Noble's Milk Company	From Other Handlers	Total
August ·	1-15	9,539,958	97,512	585,724	109,574	10,332,774
August	16-31	9,944,839	99,979	604,631	79,398	10,728,847
September	1-15	9,565,868	89,233	566,844	61,954	10,283,899
September	16-30	9,547,716	89,413	571,646	47,832	10,256,607
October	1-15.	9,245,041	97,638	593,659	45,619	9,981,957
October	16-31	8,736,543	89,420	606,914	157,176	9,590,053
November	1-15	7,267,989 .	92,808	527,177	427,900	8,315,874
November	16-30	7,068,388	96,926	497,540	470,022	
December	1-15	7,161,717	102,764	488,505	136,632	8,132,876
December	16-31	7,859,871	115,268	538,463	49,695	7,889,618 8,563,297

DISPOSITION OF MILK (in pounds)

		Sold for Class I Purposes	I Purposes		Rold for Class	Denne	
Period		Inside Marketing Area	Outside Marketing Area	Total	II Purposes In and Outside	Class II is of All Milk	Total
August	1-15	6,966,536	1,343,551	8,310,087	2,022,687	. 08	10,332,774
August 1	6-31	7,723,665	1,119,063	8-8,842,728 ·	1,886,119	. 18	10,728,847
September 1-15	1.15	7,259,916	609,707	7,869,623	2,414,276	23	10,283,899
September 16-30	6-30	7,357,163	360,366	7,717,529	2,539,078	25	10,256,607
October	1-15	7,388,241	346,877	7,735,118	2,246,839	. 83	9,981,957
October 16	16-31	7,863,951	383,563	8,247,514	1,342,539	14	9,590,053
November	1-15	7,342,128	367,841	696,601,7	605,905	. 7	8,315,874
November 16-30	5-30	7,119,195	319,311	7,438,506	694,370	6	8,132,876
December .1-15	1-15.	7,100,658	317,724	7,418,382	471,236	9	7,889,618
December 16-31	5-31	7,232,971	271,598	7,504,569	1.058.728	12	8 563 297

231. The following table shows the purchases by the Hood Company between August 1 and December 31, 1937, from other handlers all of whose producers reside outside the Commonwealth of Massachusetts:

Period		Handlers from whom purchased	Pounds of Milk
August .	1-15	New England Dairies, Inc.	30,100
August · 1	6-31	United Farmers Cooperative Creamery	
October 1	6-31	New England Dairies, Inc.	27,935
	· .	United Farmers Cooperative Creamery	
		Bellows Falls Cooperative Creamery	64,500
November	1-15	United Farmers Cooperative Creamery	
		New England Dairies, Inc.	22,360
November 1	5-30	United Farmers Cooperative Creamery	218,902
	•	Bellows Falls Cooperative Creamery	64,500
		New England Dairies, Inc.	137,785
December 1	-15	United Farmers Cooperative Creamery	47,213
/		Bellows Falls Cooperative Creamery	21,250
/:		New England Dairies, Inc.	22,355

232. The defendant Noble's Milk Company is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and having its principal place of business at 500 Rutherford Avenue in the City of Boston in said Commonwealth. It is a subsidiary of the defendant H. P. Hood & Sons, Inc. and it is operated under the same general policy as that corporation. It purchases milk from producers located in the State of Vermont who furnish a very small proportion of its total milk supply. The defendant also purchases milk from producers located in the Commonwealth of Massachusetts who furnish by far the greater proportion of its total milk supply. The milk from Vermont producers and the Massachusetts producers is received and commingled at the plant of Noble's Milk Com-

pany located at Shelburne Falls, Massachusetts. Noble's Milk Company sells its milk received from producers to the defendant H. P. Hood & Sons, Inc. which contributes to the processing of such milk and then distributes and sells it in the greater Boston marketing area.

233. The following table shows the amount of milk purchased by the Noble Company from producers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk.

NOBLE'S MILK COMPANY

receipts of MILK (in pounds)

(in pounds)

							Sold	for Class I Pur	poses*
Perio	od	0.1	From Producers		Total		Inside Marketing Area	Outside Marketing Area	Total
August	1-15		585,724	٠.	585,724		580,826	4,898	585,724
August	16-31		604,631		604,631		584,587	20,044	604,631
September	1.15		566,844		566,844		561,815	5,029	566,844
September	16-30	1.	571,646		571,646		571,646	/	571,646
October	1-15		593,659,		593,659	*	593,659	./.	593,659
October	16-31		606,914		606,914	-	606,914		606,914
November	1-15		527,177		527,177		527,177		527,177
November	16-30	•	497,540		497,540	1	497,540		497,540
December	1-15		488,505		488,505		488,505		488,505
December	16-31		538,463		538,463		538,463	**	538,463

^{*}All milk of Noble's Milk Company sold to H. P. Hood & Sons, Inc.

234. During the first seven months of 1937, thirty-five hundred producers on the average delivered their milk continuously to the Hood and Noble Companies. This number represents about twenty percent of the total number of producers shipping milk into the Boston area.

Bills and Statements Rendered to H. P. Hood & Sons, Inc. and Noble's Milk Company

235. The Market Administrator computed and rendered bills to H. P. Hood & Sons, Inc. and to Noble's Milk Company for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to H. P. Hood & Sons, Inc. and to Noble's Milk Company were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. A copy of the bill rendered H. P. Hood & Sons, Inc. for the period August 1-15, 1937, and which in form is typical of all bills rendered by the Market Administrator to H. P. Hood & Sons, Inc. and to Noble's Milk Company is hereto annexed and marked Exhibit 19.

236. The defendants H. P. Hood & Sons, Inc. and Noble's Milk Company have not paid to the Market Administrator certain sums of money as charges "for producer settlement" so-called, which he has demanded of them under the provisions of Article VIII, Section 1, Paragraph 3 of the order as amended. The nature of these sums and the manner of their computation by the Market Administrator are described in detail in Paragraphs 119 to 142 hereof. With respect to the semi-monthly delivery periods between August 1, 1937, and December 31, 1937, the sums demanded of the Hood and Noble Companies by the Market Administrator purporting to act under Article VIII, Section 1, Paragraph 3 of the order were in the amounts set forth in the following tabulation:

AUGUST-DECEMBER, 1937 Producer Settlement Charges H. P. Hood & Sons, Inc. and Noble's Milk Company

Delivery Period	Hood	٠.		Delivery Period	Noble
August 1-15	\$30,703.03			August 1-15 ·	\$1,823.8
Adjustment	1,250.75	Credit		Adjustment	. 1,381.9
August 16-31	32,487.42			August 16-31	1,957.3
Adjustment	1,041.82			Adjustment	1,189.8
Adjustment	1,065,82	Credit		September 1-15	2,715.1
September 1-15	47,753.91			Adjustment	1,470.0
Adjustment	511.31		5	September 16-30	2,774.9
Adjustment	1,319:70	Credit.		Adjustment	1,540.4
September 16-30 Adjustment Adjustment				October 1-15 October 16-31	4,558.7 3,696.5
	1 2			November 1-15	2,150.3
October 1-15 Adjustment	47,197.44 17.03			November 16-30	1,768.4
Adjustment	15.77	Credit		December 1-15	1,827.4
October 16-31	38,859.23		-	December 16-31	2,751.5
Adjustment	16.06	Credit	•	-	
November 1-15	23,534.99				\$31,606,5
November 16-30					1
December 1-15	22,708.48				
December 16-31	29,902.06				
December 10.01	20,002.00		: *		
TOTALS .	\$341,931.79	1 : 10 "		- 4	
Less Credits	5,040.33				
	\$336,891.46				

Noble's Milk Company have not paid to the Market Administrator other sums of money as charges for "marketing services" so-called which he has demanded of them under the provisions of Article IX, Section 1 of the order as amended. With respect to the semi-monthly delivery periods between August 1, 1937, and December 31, 1937, the sums demanded of the Hood and Noble Companies by

the Market Administrator purporting to act under the provisions of Article IX Section 1 of the order were in the amounts set forth in the following tabulation:

August-December, 1937 Marketing Service Charges H. P. Hood & Sons, Inc.

Noble's Milk Company

Delivery Period		Hood	Delivery Period	*	Noble	
August	1,15	\$1,900.13	August 1-15	•	\$117.14	
August	16-31	1,980.67	August 16-31		120.93	
September	1-15	1,905.22	September 1-15°		113.37	
September	16-30	1,900.75	September 16-30		114.33	
October	1-15	1,836.46	October 1-15		118.73	
October	16-31	1,734.83	October 16-31		121.38	
November	1-15	1,442.34	November 1-15		105.44	
November	16-30	1,402.10	November 16-30		99.51	
December	1-15	1,416.50	December 1-15	9	97.70	
Deçember	16-31	1,554.94	December 16-31		107.69	
		\$17,073.94		,	\$1,116.22	
1				=		

238. The sums claimed by the Market Administrator as coming due from these defendants under Article VIII, Section 1, Paragraph 3, and Article IX, Section 1 of the order, have been paid by the defendants into the registry of the district court pursuant to an Order of Supersedeas issued by a judge of the circuit court of appeals and continued in effect by the circuit court of appeals "pending the final determination on appeal of the several cases on their merits" (H. P. Hood & Sons, Inc. et al. v. United States et al., 97 F. (2d) 677).

239. Pursuant to the order of the district court in these cases, dated November 30, 1937, the defendants H. P. Hood & Sons, Inc. and Noble's Milk Company have paid to the Market Administrator all sums demanded of them for "Market Administration" so-called under Article X, Section 1 of the order. The payment of sums to the Market

Administrator due or to become due under this article was excepted from the Order of Supersedeas issued by a judge of the circuit court of appeals and continued in effect by the circuit court of appeals "pending the final determination on appeal of the several cases on their merits" (H. P. Hood & Sons, Inc. et al. v. United States et al., 97 F. (2d) 677). With respect to the semi-monthly delivery periods between August 1, 1937 and December 31, 1937, the sums demanded of the Hood and Noble Companies by the Market Administrator purporting to act under the provisions of Article X, Section 1 of the order and paid by these defendants to him in accordance with the order of the district court, were in the amounts set forth in the following tabulation:

August-December, 1937 Market Administration Charges F. P. Hood & Sons, Inc. and Noble's Milk Company

Delivery Peri	od	Hood	Delivery Perio	od		Noble
August	1-15	\$1,927.50	August	1-15		\$117.14
August	16-31	2,008.96	August	16-31		120.93
September	1-15	1,931.02	September	1-15		113.37
September	16-30	1,927.43	September			114.33
October .	1-15	1,868.54	October	1-15		118.73
October	16-31	1,765.19	October	16-31		121.38
November	1-15	1,472.16	November	1-15.		105.44
November	16-30	1,433.06	November	16-30		99.51
December	1-15	1,452.90	December	1-15	2	97.70
December	16-31	1,595.03	December	16-31		107.69
	1	\$17,381.79		**.	.\$	1,116.22

Other Proceedings

240. On September 9, 1937, H. P. Hood & Sons, Inc. and Noble's Milk Company filed with the Secretary of Agriculture petitions in accordance with the provisions of Section 8 c (15) (A) and the appropriate rules and regulations issued by the Secretary, requesting that the Secretary determine that the "purported reinstatement" and amendment of Order No. 4 was not in accordance with law; that Order No. 4 as "purportedly reinstated" and amended did not tend to effectuate the purposes of the Act under which it was issued; these petitions also requested that Order No. 4 as "purportedly reinstated" and amended be terminated and that the operation of said order be suspended, pending an audit of the records of the Market Administrator, the elimination of milk not purportedly eligible for inclusion in the equalization pool, and the clarification of the situation in regard to those distributors in the marketing area who contend that they are not subject to the order. Hearings were held upon these petitions and evidence was adduced at said hearings. Up to the present time no decision has been rendered by the Secretary of Agriculture on these petitions.

241. On October 29, 1937, the defendant Noble's Milk Company filed in this court a Bill of Interpleader, Docket No. 4556, on the Equity Docket of this court, under the provisions of the Act of Congress of January 20, 1936, c. 3, s. 11: U.S.C. Title 28, Sec. 41 (25), making parties thereto the Market Administrator and producers of milk, who, it alleged, were all the producers from whom it purchased milk from August 1, 1937, to the date of the filing of the petition. Inpursuance of said Bill of Interpleader, Noble's Milk Company has paid into the registry of the court all sums of money demanded of it by the Market Administrator under the provisions of Article IX. Section 1, and Article VIII, Section 1, Paragraph 3 of said Order No. 4 as amended, for the delivery periods August 1 through December 31, 1937.

Hood and Noble Prices

242. The Hood Company has openly and publicly posted on the receiving platform at each of its milk receiving stations plant notices at or before the beginning of each delivery period during the year 1937. All milk received by the Hood Company in such delivery periods during the year 1937 was received at these milk receiving stations after the posting of such notices and was delivered by the producers and received by the Hood Company under the terms of these notices. Copies of the plant notices for the year 1937 posted by the Hood Company are filed with this report marked Exhibit 20. The Hood Company paid its producers the amount of the posted prices from January 1, 1937, through July 31, 1937. From August 1 to December 31, 1937, the raice paid by the Hood Company has been the announced blended price for non-members, that is, the blended price announced by the Market Administrator less a two cent deduction for marketing services pursuant to the provisions of Article IX of Order No. 4 as amended. Annexed hereto as Exhibit 21 is a tabulation showing for each delivery period from August 1 through December 31, 1937, the 20th zone blended price announced under Order No. 4 as amended, for non-members of cooperatives, the 20th zone blended price computed on the basis of the Hood plant notices and the difference between the announced 20th zone blended price for non-members of cooperatives under Order No. 4 as amended and the 20th zone blended price computed on the basis of the Hood plant notices.

243. Applying the differences between the announced zone blended prices to non-members and the zone prices computed on the basis of the plant notices, to the volume of milk received in each zone from producers by H. P. Hood & Sons, Inc. for each delivery period between August 1 and December 31, 1937, the following amounts of money

are arrived at:

,	Aug.	1-15 16-31				1,	\$32,599.55 34,487.13
	Sept. Sept.	1-15 16-30	.*	1	.5		49,628.29 50,003.06
		1-15 16-31					50,393.92 21,041.66
		1-15 16-30					8,085.98 7,525.00
		1-15 16-31		. •		*	8,937.76 16,503.70
				*			\$279,206.05

244. The Noble Company has openly and publicly posted on the receiving platform of its milk receiving station plant notices at or before the beginning of each delivery period during the year 1937. All milk received by the Noble Company at its country station in Shelburne Falls, Massachusetts, was received after the posting of such plant notices and was delivered by the producers and received by the Noble Company under the terms of these notices. Copies of the plant notices for the year 1937 posted by the Noble Company are filed with this report marked Exhibit 22. The Noble Company paid its producers the amount of the posted prices from January 1, 1937, through July 31, 1937. From August 1 to December 31, 1937, the price paid by the Noble Company has been the blended price announced by the Administrator for producers not members of a cooperative association in the 12th zone, that is, the announced blended price less two cents as provided in Article IX of Order No. 4 as amended for marketing services. Annexed hereto as Exhibit 23 is a tabulation showing for each delivery period from August 1 through December 31, 1937, the blended price for non-members in the 12th zone announced under Order No. 4 as amended, the prices computed on the basis of the Noble plant notices, and the difference between the announced blended price for non-members in the 12th zone and the prices computed on the basis of the Noble Company plant notices.

245. Applying the difference between the announced blended prices to non-members and the zone prices computed on the basis of the plant notices of the Noble Company, to the volume of milk received by the Noble Company for each delivery period between August 1 and December 31, 1937, the following amounts of money are arrived at:

Aug. 1-15	\$2,009.03
Aug. 16-31	2,158.53
Sept. 1-15	2,890.90
Sept. 16-30	2,943.98
Oct. 1-15	3,217.63
Oct. 16-31	1,511.22
Nov. 1-15	643.16
Nov. 16-30	587.10
Dec. 1-15	664.37
Dec. 16-31	1,200.77
Dec. 10-31	\$17,826.69

The Intervenor

246. In the case of United States et al. v. H. P. Hood & Sons, Inc. et al., the petition of one E. Frank Branon to intervene was allowed by the court. E. Frank Branon is a producer of milk for the greater Boston marketing area living in Fairfield, Vermont. For about twenty-five years and throughout the year 1937 he has sold milk to H. P. Hood & Sons, Inc. at its milk receiving station at Fairfield, Vermont, which is located in the so-called 27th freight zone from Boston. He is one of a number of producers who have been delivering milk under the plant notices at the Fairfield plant. The price paid to Mr. Branon for milk in the 27th zone, by H. P. Hood & Sons, Inc. in any instance is \$.041 less than the price in the 20th zone. The Hood Company paid Mr. Branon the amount of the posted prices from January 1 through July 31, 1937, and, from August 1 through December 31, 1937, the applicable zone price announced by the Administrator. Attached hereto as Exhibit 24 is a tabulation by delivery periods for the year 1937 showing for Mr. Branon the weight and test of the milk which he sold to the Hood Company and the prices paid therefor.

247. The following table shows for E. Frank Branon the amount by which the price for all milk delivered by him in each delivery period between August 1, 1937, and December 31, 1937, when computed on the basis of the prices contained in the posted plant notices exceeds the amount paid him on the basis of the Administrator's announced prices for such delivery periods:

Aug. 1-15 4	\$44.66
Aug. 16-31	42.83
Sept. 1-15	51.85
Sept. 16-30	48.01
Oct. 1-15	50.24
Oct. 16-31	20.49
Nov. 1-15	7.98
Nov. 16-30	7.50
Dec. 1-15	9.58
Dec. 16-31	17.26
	\$300.40

It appeared that originally petitions for intervention were filed by 65 producers of milk for the Greater Boston Marketing Area living in New England and who, throughout the year 1937, and for some time prior thereto, had sold milk to H. P. Hood & Sons, Inc., on behalf of themselves and all others who were similarly situated and might care to join, but the District Judge, in order to simplify the procedure, limited the intervention to one producer, E. Frank Branon, who, for the purposes of the case, would represent all Hood producers.

UNITED STATES ET AL. V. THE WHITING MILK COMPANY, No. 4520

The Defendant

248. The Whiting Milk Company, a Delaware corporation, defendant in No. 4520 Equity, is and has for a long time been in the business of receiving, buying, processing, selling, and distributing milk in the greater Boston marketing area. Its principal place of business is at 570 Rutherford Avenue in the Charlestown section of the city of Boston. Apart from the milk which it buys from other handlers, its milk is for the most part received from producers by it at country receiving stations owned and operated by it at North Walpole and Colebrook, New Hampshire: Randolph and Waterbury, Vermont; and Skowhegan, Harmony, and Newport, Maine. The operation of these country receiving stations is set forth more in details in Paragraphs 250 to 255 of this report. The Whiting Company receives the balance of its milk from producers located in Middlesex and Worcester counties in the Commonwealth of Massachusetts as is more fully set forth in Paragraphs 256 to 257 of this report. The milk from the country receiving stations, as well as the Massachusetts milk, is ultimately sent to the Charlestown plant. From the Charlestown plant the Company sells the milk in the greater Boston marketing area and, to some extent, outside the area in secondary markets.

249. The Whiting Milk Company is the second largest distributor in the greater Boston marketing area. It buys from about 1,400 producers and, during the year 1937, handled 71,378,982 pounds of milk. During the period August 1 to December 31, 1937, it handled 81/2% of the entire milk handled and reported to the Market Administrator under the order as amended, and it had 101/2% of the fluid milk sales reported (as distinguished from sales of cream, condensed milk, etc.). A high percentage of the milk that it handles is sold as fluid milk as compared with the market as a whole.

250. The Whiting Milk Company since December 1. 1936, has been buying its milk from producers at prices and in the manner hereinafter described. It maintains country receiving stations at various points in Maine, New Hampshire, and Vermont at which the milk from the farms of the producers is received by the Whiting Company. These stations are owned and operated by the Whiting Company. The procedure is for the producers to bring in their milk in forty-quart cans. These are taken off the producers' trucks, the milk is tested, poured into a weigh tank where the milk received from each particular producer is weighed individually, and the weight is recorded. The cans are then washed and returned to the producer, and the producer then departs. The producers own the cans in most cases, but in some cases the Whiting Company owns them and charges the producer a small rental:

251. After the milk has been weighed, a sample is taken to determine the butterfat content, and the milk is then put into a large receiving tank, in which the milk of the several producers is mingled. From this tank the milk is pumped over the cooler. The cooler is a series of pipes through which a cooling medium is pumped, and over which the milk is allowed to trickle. From the cooler, the milk that is to be shipped as fluid milk is either put in forty-quart cans and loaded onto a freight car or is pumped directly into a tank car and is forwarded to the plant of the company at Charlestown (Boston), Massachusetts.

252. At two of the Whiting receiving stations Newport, Maine, and Colebrook, New Hampshire, there is a further processing. The milk which is not needed at Boston in the form of fluid milk instead of being put in cars for shipment is run from the receiving tank to a separator, which is a large revolving affair that separates the cream from the skim milk. The cream is piped into holding vats where it is heated and pasteurized. It is then run over a tubular cooler and from there put into cans for shipment. The skim milk, unless needed as such in Boston for buttermilk,

is piped from the separator to a dryer, which is a machine that has two rotating drums which are superheated. As the skim milk passes over these, the water is evaporated and the skim milk powder is scraped off by knives. This powder is then put into barrels. In some cases instead of making skim milk powder only a portion of the water is evaporated and the resulting product is condensed skim milk. The process for this is to heat the skim milk in a "hot well" which is a stainless steel or tin coppered tank. After a certain amount of heating it is piped into a vacuum pan in which the excess moisture is driven from the milk. The manufactured products of the Colebrook and Newport stations were ultimately shipped to Boston.

253. Approximately one-third of the milk handled at Newport as described above was milk originally received by the Whiting Milk Company at its receiving stations at Skowhegan, Maine, and Harmony, Maine, from producers delivering to those stations. At these two stations after the milk is received, weighed, sampled, and cooled, it is transshipped by the Whiting Company, wholly within the State of Maine, to Newport, Maine, where it is then mingled

and processed with the milk received at Newport.

254. The extent to which the milk at Newport and Colebrook is separated and manufactured is regulated each day from the Boston office of the Whiting Company. The production manager determines the amount of milk he needs for his fluid requirements, which varies from day to day. Knowing the approximate receipts at the other stations, he can thus determine how much is to be shipped to Boston in fluid form from Newport and Colebrook and how much is to be separated at those stations.

255. During the year 1937 approximately 31,600,000 pounds of milk were handled by the Whiting Milk Company at Newport, of which approximately 62% was shipped to Boston as fluid milk and approximately 38% was further processed as above described. The manufacturing of milk at Colebrook was only an occasional matter. All of the milk from both stations was included by the Market Administrator in the computation of the blended price for the two

delivery periods in August and in preparing all of the bills to the Whiting Milk Company.

256. The Whiting Company purchases a certain amount of milk in Middlesex and Worcester counties, Massachusetts, which is trucked to its plant at Charlestown, Massachusetts, never leaving the Commonwealth of Massachusetts at any time. After weighing, pasteurizing, and bottling the same at Charlestown, it is sold and consumed locally in Massachusetts. The Whiting Company has contracts with certain public institutions which specify Massachusetts milk and which require approximately 233,000 pounds of milk each month. All Massachusetts milk is received at the Charlestown plant at different hours from the milk from northern New England, and when received is put through the weighing, pasteurizing, and bottling machinery as one unit, the out-of-state milk being held up during the process if necessary. It is, however, handled in the same machines and by the same employees as those that handle the out-of-state milk and the surplus Massachusetts milk not needed for institutional sale is thereafter handled in the same manner as the out-of-state milk without any attempt to segregate the two if they happen to be going through the plant at the same time.

257. An average of about 440,000 pounds per month is received from approximately seventy Massachusetts producers by the Whiting Milk Company and is handled solely within the Commonwealth of Massachusetts from the point of production to the point of consumption, this being about 7.5% of the total amount of milk handled by the Whiting Milk Company. The Whiting Milk Company notified the Market Administrator at the time that the first report was made to him that the figures in the report included this Massachusetts milk. The entire receipts of milk as reported by the company were included in computing the blended price each period in August and the entire receipts as reported have been included in computing each of the bills rendered to the Whiting Company for August and subsequent periods.

258. The following table shows the amounts of milk purchased by the Whiting Milk Company from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk:

WHITING MILK COMPANY RECEIPTS OF MILK (in pounds)

Period			,	From Producers	From Other Handlers	Total
August	1-15			3,540,010	1,374,599	4,914,609
August	16-31		0	3,698,868	1,533,447	5,232,315
September	1-15			3,445,444	1,054,507	4,499,951
September	16-30			3,348,388	906,594	4,254,982
October	1-15	*		3,290,841	1,039,060	4:329,901
October	16-31			3,208,275	1,186,314	4,394,599
November	1.15	*		2,715,246	1,291,130	4,006,376
November	16-30			2,683,937	1,269,730	3,953,667
December	1-15			2,754,390	1,113,216	3,867,606
December				3,023,821	870,173	3,893,994

DISPOSITION OF MILK (in pounds)

	Sold	for Class I Pur	poses	Percent	Sold for Class
Period	Inside Marketing Area	Outside Marketing Area	Total	ts of All Milk	II Purposes In and Outside Marketing Area
Aug. 1-15	3,585,082	402,607	3,987,689	19	926,920
Aug. 16-31	3,785,516	395,106	4,180,622	20	1,051,693
Sept. 1-15	3,441,882	217,013	3,658,895	19	841,056
Sept. 16-30	3,523,834	97,401	3,621,235	15	633,747
Oet. 1-15	3.581.323	41,726	3,623,049	16	- 706,852
Oct. 16-31	3,762,188	41,983	3,804,171	13	590,418
Nov. 1-15	3,451,913	34,956	3,486,869	13	519,507
Nov. 16-30	3,389,108	37,232	3,426,340	13	527,327
Dec. 1.15	3,345,704	34,153	3,879,857	e 13	487,749
Dec. 16-31	3,386,488	32,662	3,419,150	12	474,844

259. The Whiting Company from time to time purchases from other handlers and distributes and sells in the marketing area milk which has been received by such handlers from producers located outside the Commonwealth of Massachusetts and transported into the marketing area. The milk which the Whiting Company so purchased from other handlers was bought on the basis of a stipulated quantity per day and was all used as Class I milk. The following table shows for each delivery period between August 1, 1937, and December 31, 1937, the amount of such milk so purchased by the Whiting Company from other handlers in the market and the name of the handlers from whom it was purchased:

Perio	d .	Handlers from Whom Purchased	Pounds of Milk
August	1-15	Bellows Falls Cooperative Creamery	702,309
		Manchester Dairy System	107,857
		United Farmers Cooperative Creamery Ass'n.	564,433
lugust	16-31	Bellows Falls Cooperative Creamery	.729,014
		Manchester Dairy System	124,496
		United Farmers Cooperative Creamery Ass'n.	604,133
		Milton Cooperative Creamery	72,928
		D. Whiting & Sons	2,876
eptember	1-15	Bellows Falls, Cooperative Creamery	392,422
b : 0		Manchester Dairy System	111,669
		United Farmers Cooperative Creamery Ass'n.	541,858
	,	D. Whiting & Sons	8,558
eptember	16-30	Bellows Falls Cooperative Creamery	322,550
		Manchester Dairy System	108,698
	*	United Farmers Cooperative Creamery Ass'n.	460,655
		D. Whiting & Sons	14,693
etober -	1 10	D. H W. H. G	
ctooer .	1.10	Bellows Falla Cooperative Creamery	384,684
		Manchester Dairy System	105,411
		United Farmers Cooperative Creamery Ass'n.	532,564
		D. Whiting & Sons	16,401
ctober	16-31	Bellows Falls Cooperative Creamery	491,476
£ .		Manchester Dairy System	117,255
		United Farmers Cooperative Creamery Ass'n.	564,769
		D. Whiting & Sons	12,814
Vovember	1-15	Bellows Falls Cooperative Creamery	572,160
		Manchester Dairy System	108,874
*		Milton Cooperative Creamery	34,400
		United Farmers Cooperative Creamery Ass'n.	562,750
		D. Whiting & Sons	12,946
ovember	16-30	Bellows Falls Cooperative Creamery	272 377
,		Manchester Dairy System	656,357
	*	United Farmers Cooperative Creamery Ass'n.	103,200
		D. Whiting & Sons	496,281
ha.a			13,892
ecember	1.15	Bellows Falls Cooperative Creamery	493,685
		Manchester Dairy System	103,200
. *	*	United Farmers Cooperative Creamery Ass'n.	503,280
		D. Whiting & Sons	13,051
ceember	16-31	Bellows Falls Cooperative Creamery	155,837
		Manchester Dairy System	112,634
		United Farmers Cooperative Creamery Ass'n.	588,496
		D. Whiting & Sons	13,206
			40,200

Bills and Statements Rendered to the Whiting Milk Company

a bill to the Whiting Company for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to the Whiting Company were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. A copy of the bill rendered the Whiting Milk Company for the period October 1-15, 1937, and which in form is typical of all bills rendered by the Administrator to the Whiting Milk Company is hereto annexed and marked Exhibit 25.

The Whiting Company Prices

261. The Whiting Company has openly and publicly posted, on the receiving platform at each of its milk receiving stations, plant notices at or before the beginning of each delivery period during the year 1937. The notices were also mailed to each producer who had delivered milk to the Whiting Company during the preceding month. All milk received by the Whiting Company in such delivery periods was received at these milk receiving stations after the posting of such notices and was delivered by the producers and received by the Whiting Company under the terms of these notices. Copies of the plant notices for the year 1937 posted by the Whiting Company are filed with this report and marked Exhibit 26. The Whiting Company paid its producers the amount of the posted prices from January 1, 1937, through July 31, 1937. From August 1, 1937, to December 31, 1937, the price paid by the Whiting Company has been the announced blended price for nonmembers, that is, the blended price announced by the Market Administrator less a two-cent deduction for marketing services pursuant to the provisions of Article IX of Order No. 4 as amended. Annexed hereto as Exhibit 27 is a tabulation showing for each delivery period between August 1 and December 31, 1937, the twenty-second zone blended price announced under Order No. 4 as amended for non-members of cooperatives after deducting the two-cent charge for marketing services, the twenty-second zone blended price as stated in the Whiting Company plant notices, and the difference between the two.

262. The total amount paid into court by the Whiting Company for the period August 1, 1937, to February 28, 1938, inclusive, was \$168,487.58. The total amount that has been paid to its producers at the Administrator's announced prices for the same period is \$920,288.63. If the Whiting Company had paid its producers on the basis of the prices contained in its plant notices, the total would have been \$1,002,126.90, or \$81,838.27 more than actually was paid. In addition, the Whiting Company has paid the Market Administrator \$8,635.95 in said period for the Administrator's charges under Article X of the order.

263. Upon the filing of the bills of complaint in these cases, a preliminary mandatory injunction directing the defendants to comply with the order of the Secretary was sought by the plaintiffs. Such an injunction was granted by the district court (United States et al. v. Whiting Milk Company, 21 F. Supp. 321), which was superseded by order of a judge of the circuit court of appeals conditioned on payment into court of the so-called "producer settlement" and "marketing services" charges called for by the order of the Secretary, and payment to an individual known as the Market Administrator of the so-called "administration charges" under said order. This order of supersedeas has been continued by the circuit court of appeals "pending the final determination on appeal of the several cases on their merits" (H. P. Hood & Sons, Inc. v. United States et al., 97 F. (2d) 677).

264. Pursuant to the order of supersedeas the defendant Whiting Milk Company has paid into the registry of the

court for the period August 1, 1937, to March 31, 1938, the following sums representing charges against it for the "producer settlement" account and for "marketing services", as computed by the Market Administrator purporting to act under Article VIII, Section 1, Paragraph 3 and Article IX, Section 1 of the order and has paid to the Market Administrator for the same period the following amounts as charges for "administration" expense under the provisions of Article X, Section 1 of the order:

WHITING MILK COMPANY

Period	Producer Settlement and Marketing Services Charges	Adminis- tration Charges
1937		*
August 1-15	\$8,795.34	\$708.00
August 16-31 ·	8,109.04	739.77
September 1-15	16,833.06	689.09
September 16-30	18,825.49	670.28
October 1-15	17,583.62	658.17
October 16-31	13,138.86	641.66
November 1-15	6,034.40	543.05
November 16-30	5,085.41	536.79
December 1-15	6,335.59	550.88
December 16-31	10,725.51	604.76
1938		
January 1-15	12,532.64	577.40
January 16-31	14,252:26	621.49
February 1-15	15,145.79	584.97
February 16-28	15,090.57	509.64
March 1-15	18,412.15	598.77
March 16-31	23,397.16	673.89
Totals	\$210,296.89	\$9,908.61

The amount of the charges for marketing services was the same in each delivery period as the amount of administration charges.

Other Proceedings

265. On September 9, 1937, the defendant Whiting Milk. Company filed a written petition with the Secretary of Agriculture pursuant to Section 8c (15) of said Agricultural Marketing Agreement Act of 1937, stating that the order was not in accordance with law and that the Act was contrary to the provisions of the Constitution of the United States and praying that they be granted a hearing, and that after the hearing the order be vacated or modified. Hearings were held before officials designated by the Secretary of Agriculture beginning September 22 and continuing through October 4, 1937, but before these hearings were concluded the present suits were brought by the United States and the Secretary. No decision has yet been made on the said petition.

The Intervenor

266. In the case of United States et al. v. Whiting Milk Company the petition of one Chester Noyes to intervene was allowed by the court. Chester Noyes is a producer of milk for the greater Boston marketing area living in Stewartstown, New Hampshire. For about nine years and throughout the year 1937 he sold milk to the Whiting Milk Company at its receiving station at Colebrook, New Hampshire, which is in the so-called "twenty-fifth" freight zone from Boston. He is one of about 120 producers who have been delivering milk under the plant notices at the Colebrook plant. The Whiting Milk Company paid Mr. Noyes the amount of the posted prices from January 1, 1937, through July 31, 1937, and from August 1 through December 31, 1937, the applicable zone price announced by the Administrator. The following tabulation shows by delivery periods from August 1, 1937, to December 31, 1937, the weight and test of the milk which Mr. Noyes sold to the Whiting Company and the prices paid therefor:

Chester Noyes
in account with
WHITING MILK COMPANY

Period Received	Pounds of Milk Delivered	Butterfat Test of Milk Delivered	Prices Paid for Milk of Test Delivered
August 1-15	4030	3.9	2.133
August 16-31	3709 . —	3.8	2.123
September, 1-15	3675	4.0	2.12 •
September 16-30	4013	4.0	2.123
October 1-15	3407	4.0	2.12
October 16-31	3844	4.2	2.205
November 1-15	3849	4.0	2.323
November 16-30	4332	4.2	2.478
December 1-15	4404	4.0	2.373
December 16-31	4963	4.0	2.227

267. The price for all milk delivered by Chester Noves in the delivery periods between August 1 and December 31, 1937, if computed on the basis of the prices contained in the posted plant notices would exceed the amount paid him on the basis of the Administrator's announced prices for such delivery periods by \$129.64.

268. It appeared that originally the petition for intervention was filed by three producers on behalf of themselves and all others who were similarly situated and might care to join, but the District Judge in order to simplify the procedure limited the intervention to one producer who, for the purposes of the case, would represent all Whiting producers.

269. For the period August 1 to December 31, 1937, inclusive the price for all milk delivered by all Whiting producers if computed on the basis of the prices contained in

the posted plant notices would exceed the amount paid them on the basis of the Administrator's announced prices for such delivery period by \$52,564.69. If the blended prices should be recomputed so as to include in the computation the milk of handlers who were previously excluded because they had not made certain payments, as set forth in paragraph 146 of my consolidated report (and see also paragraphs 144 and 148), the total amount due all Whiting producers for all milk delivered by them for the period August 1, 1937 to December 31, 1937, inclusive will exceed the amount actually paid them by about \$27,000; and in such an event the amount which the Whiting Company should pay the Market Administrator would be about \$27,000 less than the amount originally billed to that company and paid by it into Court.

UNITED STATES ET AL. V. A. J. ROBINSON, No. 4530.

The Defendant

270. The defendant A. J. Robinson, doing business under the trade name of Mountain View Creamery and under the trade name of A. J. Robinson & Son, is a citizen of the Commonwealth of Massachusetts, resides in Roslindale, in the city of Boston therein, and has his principal place of business at 172 Kittredge Street in said city and Commonwealth.

271. A. J. Robinson is a handler of milk as defined in the order and is engaged in the business of receiving, buying, processing, selling, and distributing milk.

272. The defendant A. J. Robinson, doing business under the name of Mountain View Creamery, receives milk from producers at his plant in Starksboro, Vermont. In each of the delivery periods btween August 1, 1937, and December 31, 1937, the defendant A. J. Robinson received milk from approximately 100 producers at his Starksboro, Vermont, plant. All of the milk received by A. J. Robinson from producers at Starksboro, Vermont was subsequently distributed and sold in the marketing area.

273. The following table shows the amount of milk received by A. J. Robinson from producers in each delivery period between August 1, 1937, and December 31, 1937, and the eventual disposition which was made of the milk:

MOUNTAIN VIEW CREAMERY

	(in pounds)					(in pounds)			
	Period	1	From Producers	Total	•	Sold for Class I Purposes in and Outside Marketing Area*	Sold for Class II Purposes in and Outside Marketing Area		
Aug	ust	1.15	278,113	278,113		261,460	16,653		
Aug	ust	16-31	277,964	277,964		248,540	29,424 .		
Sept	ember	1-15	262,001	262,001		215,305	46,696		
Sept	ember	16-30	256,589	256,589		222,360	34,229		
Octo	ber .	1-15	261,537	261,537		226,015	35,522		
Octo	ber	16-31	257,174	257,174		220,320	36,854		
Nove	ember	1.15	221,323	221,323		187,000	34,323		
Nov	ember	16-30	218,245	218,245		183,345	34,900		
Dece	mber	1-15	225,164	225,164		196,350	28,814 4		
Dece	ember	16,81	244,466	244,466	. /	215,815	28,651		

[&]quot;All reported inside marketing area

Failure to Report

274. On November 30, 1937, the Market Administrator had received no report from the defendant A. J. Robinson, doing business as Mountain View Creamery, for the delivery periods October 1-15, 1937, and October 16-31, 1937.

Bills and Statements Rendered to A. J. Robinson

275. The Market Administrator computed and rendered a bill to A. J. Robinson for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to A. J. Robinson were

computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended if it be held that A. J. Robinson is subject to the order. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. A copy of the bill rendered A. J. Robinson for the period October 1-15, 1937, and which in form is typical of all bills rendered by the Administrator to A. J. Robinson, is hereto annexed and marked Exhibit 28.

276. The following table shows the amounts for which bills and statements were rendered to A. J. Robinson for each delivery period between August 1, 1937, and December 31, 1937.

Amounts of Billings to the Mountain View Creamery for Product Settlement, Marketing Services, and Market Administration by Frieds from August 1, 1937, to and including December 31, 1937 (Exhibits 134A-J).

Period			Producer Settlement		Market Services		Market Adminis- tration
August	1-15		\$1,428.35		\$55.62		\$55.62
August,	16-31		1,227.40	6	55.59	2 .	55.59
eptember	1-15		1,524.05		52.40		52.40
September	16-30		1,646.93		51.32		51.32
October	1-15		1,688.85		52.31		52.31
October	16-31	* *	1,260.99	1 .	.51.43		51.43
November	1-15		616.90		44.26		44.26
November	16-30		515.75		43.65		43.65
December	1-15		609.94		45.03		45.03
December	16-31		979.67		48.89	-	48.89

^{277.} As of January 26, 1938, the defendant A. J. Robinson, doing business as Mountain View Creamery, had paid the following amounts in liquidation of the market administration charges billed to him for the delivery periods August 1 to December 31, 1937:

August	1-15		4	\$	55.6	32
August	16-31				55.5	69
September		*			52.4	10
September					51.3	32
*October					52.3	31 ,
October ·	16-31				51.4	13
November	1-15				44.5	26
November	16-30				43.6	35
December	1-15					
December	16-31					

278. As of January 26, 1938, the defendant A. J. Robinson, doing business as Mountain View Creamery, had paid nothing in liquidation of the bills and statements rendered to him by the Market Administrator for the delivery periods August 1 to December 31, 1937, except as shown by the table set forth in Finding 277 supra. As of March 31, 1938, bills had been rendered by the Market Administrator to the defendant A. J. Robinson for amounts alleged to be due under the provisions of Article VIII, Section 1, Paragraph 3, and Article IX, Section 1 of the order in the sum of \$20,793.43 and of this total the defendant had paid \$13,-123.04 into the registry of the court.

UNITED STATES ET AL. V. WESTWOOD FARM MILK COMPANY, No. 4544

The Defendant

279. The defendant Westwood Farm Milk Company is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 11 Ballard Street, Jamaica Plain, in the city of Boston in said Commonwealth.

280. The Westwood Farm Milk Company is engaged in the business of receiving, buying, processing, selling, and distributing milk and is a handler of milk in the marketing area. The defendant corporation receives milk from producers located in the state of Vermont; the milk is transported in interstate commerce to the distributing plant of the defendant corporation in Boston, Massachusetts, and

there processed and then distributed and sold by the defendant corporation in the marketing area. In each delivery period between August 1, 1937, and December 31, 1937, all of the producers from whom the Westwood Farm Milk Company received milk resided in the state of Vermont.

281. If Exhibits 100A-J are properly in evidence, the following table shows the amount of milk received by the Westwood Farm Milk Company from producers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk.

WESTWOOD FARM MILK COMPANY

DISPOSITION OF MIL

	(in p	ounds)			(in pounds)				
Period	Period		Period From Producers		From Other To Handlers Total		Sold for Class I Purposes in and Outside Marketing Area*	Sold for Class II Purposes in and Outside Marketing Area	
August	1-15	70,119		70,119	68,376	1,743			
August	16-31	73,816		73,816	72,340	1,476			
September	1-15	68,423	1,530	69,953	65,582	4,371			
September	16-30	68,695	1,700	70,395	* 67,652	2,743			
October	1-15	69,617	850	70,467	64,575	5,892			
October	16-31	69,643	. 1	69,643	66,170	3,473			
November	1-15	59,270	8,500	67,770	62,808	4,962			
November	16.30	60,556	5,100	65,656	60,896	4,760			
December	1-15	60,126	3,400	63,526	62,271	1,255			
December	16-31	65,153	2,550	67,703	65,153	2,550			

^{*}All reported inside marketing area.

RECEIPTS OF MILK

Bills and Statements Rendered to The Westwood Farm Milk Company

282. The Market Administrator computed and rendered a bill to the Westwood Farm Milk Company for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to the

Westwood Farm Milk Company were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. All bills rendered to the Westwood Farm Milk Company were similar in form to the bill which was rendered A. J. Robinson for the delivery period October 1-15, 1937, and which is annexed to this report as Exhibit 28.

283. The following table shows the amounts for which the bills and statements were rendered to Westwood Farm-Milk Company for each delivery period between August 1,

1937, and December 31, 1937:

Amounts of Billings to Westwood Farm Milk Company for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to and including December 31, 1937.

Period	•		Producer Settlement	. 0	Marketing Services		Market Adminis tration
August	1-15		\$364.52		\$14.02	*	\$14.02
August	16-31		367.68	٠.	14.76	- ,+	14.76
September	1-15		461.17		13.68		13.68
September		-	491.52	4. 5	13.74		13.74
October	1-15	0	473.49		13.92		13.92
Octobér	16-31		387.66		13.93		13.93
November	1-15		195.27		11.85		. 11.85
November	16-30		174.70		12.11	* ,	12.11
December	1-15		214.40		12.03	,	12.03
December	16-31		308.83		13.03	- 5	13.03

^{284.} As of January 26, 1938, the defendant Westwood Farm Milk Company had paid to the Market Administrator the following amounts in liquidation of the market administration charges billed to it for the delivery periods August 1 to December 31, 1937:

August 1-15			\$14.02	
August 16-31			14.76	
September 1-15		1	13.68	
September 16-30	- "		13.74	
October 1-15			13.92	
October 16-31			13.93	
November 1-15			11.85	
November 16-30			12.11	
December 1-15				
December 16-31				

285. As of January 26, 1938, the defendant Westwood Farm Milk Company had paid nothing to the Market Administrator in liquidation of the bills and statements rendered to it by the Market Administrator for the delivery periods August 1 to December 31, 1937, except as shown in the table set forth in Finding 284 supra. As of March 31, 1938, bills had been rendered by the Market Administrator to the Westwood Farm Milk Company for amounts alleged to be due under Article VIII, Section 1, Paragraph 3 and Article IX, Section 1 of the order in the sum of \$6,213.78 and of that total the defendant Westwood Farm Milk Company had paid \$3,955.55 into the registry of the court.

United States et al. v. Wm. T. Jones Company, No. 4543 The Defendant

286. The defendant Wm. T. Jones Company is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 5 Wesley Street in the city of Chelsea in the Commonwealth of Massachusetts.

287. The Wm. T. Jones Company is engaged in the business of receiving, buying, processing, selling, and distributing milk, and is a handler of milk as defined in the order.

288. The Wm. T. Jones Company purchases or otherwise receives milk from producers located in the states of Maine and New Hampshire. The milk is transported in interstate commerce to its distributing plant in Chelsea,

Massachusetts, where it is processed and then distributed and sold by the Wm. T. Jones Company in the marketing area. In the delivery period August 1 to August 15, 1937, the Wm. T. Jones Company received milk from approximately 16 producers whose farms were located in the State of Maine and from approximately 19 producers whose farms were located in the State of New Hampshire.

289. The Wm. T. Jones Company from time to time purchases from other handlers and distributes and sells in the marketing area milk which has been received by such handlers from producers located outside the Commonwealth of Massachusetts and transported in interstate commerce into the marketing area.

290. The following table shows the amount of milk received by the Wm. T. Jones Company from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk:

WM. T. JONES COMPANY

		From From			Sold for Class I Purposes			Sold for Class II purposes		
Period		produ- cers	odu- other	produ- other Total	Total	•	Inside Market- ing area	Outside Market- ing area	Total Class I	in and outside marketing area
August	1-15	50,015	26,945	76,960		72,166	1,870	74,036	2,924	
August	16-31	65,959	30,090	96,049		90,318	850	91,168	4,881	
September	1.15	92,243	10,440	102,683		87,133	6,278	93,411	9,272	
September	16-30	89,846	6,630	96,476		90,629		90,629	5,847	
October	1-15	99,964	7,565	88,529		82,443		82,443	6,086	
October	16-31	14,427	17,595	92,022		84,314	1 1	84,314	7,708	
November	1.15	58,413	29,237	87,950		78,681		78,681	8,969	
November	16-30	57,348	27,685	85,033		77,999		77,999	7,034	
December	1.15	93,577		93,577		80,030		80,030	13,547	
December	16-31 -	102,075		102,075		76,547	*	76,547	25,526	

Bills and Statements Rendered to the Wm. T. Jones Company

291. The Market Administrator computed and rendered a bill to the Wm. T. Jones Company for each of the delivery periods between August 1 and December 31, 1937. It is

agreed by the parties that the amounts billed to the Wm. T. Jones Company were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. All bills rendered to the Wm. T. Jones Company were similar in form to the bill rendered A. J. Robinson for the delivery period October 1 to 15, 1937, which is attached to this report as Exhibit 28.

292. The following table shows the amounts for which bills and statements were rendered to the Wm. T. Jones Company for each delivery period between August 1, 1937, and December 31, 1937:

Amounts of Billings and Adjustments in Billings to the Wm. T. Jones Company for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to and Including December 31, 1937.

	Produce Original	er Settlement Adjustment	Marketing Services	Market Adminis- tration
August 1-15	\$183.99		\$10.00	\$10.00
August 16-31	236.34		13.19	. 13.19
September 1-15	509.04.	•	18.45	18.45
September 16-30	574.68	\$1.49 (Cr.)	17.97	17.97
October 1-15	523.61		16.19	16.19
October 16-31	341.10		14.89	14.89
November 1-15	115.91		11.68	11.68
November 16-30	108.74		11.47	11.47
December 1-15	120.08		18.72	18.72
December 16-31	139.59		20.42	20.42

293. As of January 26, 1938, the defendant Wm. T. Jones Company had paid the following amounts in liquidation of the market administration charges billed to it for the delivery periods August 1 to December 31, 1937:

August	1-15			4	10.00
August	16-31	• ,			13.19
September					18.45
September			· A		17.97
October	1-15				16.19
October	16-31	1,-	٠.		14.89
November					11.68
November	16-30				11.47
December	1-15				18.72
December			1.		
December	16-31		1.	. *	

294. As of January 26, 1938, the defendant Wm. To Jones Company had paid nothing in liquidation of the bills and statements rendered to it by the Market Administrator for the delivery periods August 1 to December 31, 1937; except as shown in the table set forth in Finding 293, supra. As of March 31, 1938, bills had been rendered by the Market Administrator to the Wm. T. Jones Company for amounts alleged to be due under the provisions of Article VIII, Section 1, paragraph 3, and Article IX, Section 1 of the order, in the sum of \$5,099.14 and of this total the defendant Wm. T. Jones Company had paid \$4,720.11 into the registry of the court.

United States et al. v. Green Valley Creamery, Inc., No. 4522

The Defendant

295. The defendant Green Valley Creamery, Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 40 Lake Street, in the city of Somerville in said Commonwealth.

296. Green Valley Creamery, Inc. was organized in October, 1934, and within a month or six weeks thereafter purchased the plant it now operates at Passumpsic, Vermont. From the time that Green Valley Creamery, Inc. purchased the plant at Passumpsic. Vermont, to date the officers of Green Valley Creamery, Inc. have been Otis H. Parker, president; Howard B. Parker, treasurer; and Alfred E. Collinson, secretary. During this same period the aforesaid Otis H. Parker, Howard B. Parker, and Alfred E. Collinson have been the directors of Green Valley Creamery, Inc. No stock book is kept for Green Valley Creamery, Inc. At the present time there are outstanding 100 shares of stock in Green Valley Creamery, Inc., all of which are owned by the treasurer, Howard B. Parker. The president of Green Valley Creamery, Inc., Otis H. Parker, is the brother of Howard B. Parker.

297. Green Valley Creamery, Inc., is a handler of milk as defined in the order and is engaged in the business of receiving, buying, processing, selling and distributing milk.

298. Green Valley Creamery, Inc., purchases milk from producers located in the State of Vermont: The said milk is sold to other handlers and transported in interstate commerce into the marketing area and such other handlers process, distribute, and sell the milk in the Boston area.

299. In each delivery period between August 1, 1937, and December 31, 1937, Green Valley Creamery, Inc., sold all of the milk which it received from producers to the Stuart Milk Company. The Stuart Milk Company, a Massachusetts corporation, operates a city plant at 40 Lake Street, Somerville, Massachusetts. The following table shows the amounts of milk received from producers by Green Valley Creamery, Inc., and its disposition in each delivery period between August 1, and December 31, 1937.

GREEN VALLEY CREAMERY, INC.

		(in pou	(in pou			
Perio	Period		rs Total	Sold for Class I purposes in and outside marketing area	Sold for Class U purposes in and outside marketing area-	
August	1-15	112,264	112,264	111,945	319	
August	16-31	118,298	118,298	117,640	658	
September	1-15	118,134	118,134	. 117,326	808	
September	16-30	. 122,182	122,182	122,017	165	
October .	1.15	. 113,810	113,810	113,716	94	
October	16-31	112,414	112,414	111,818	. 596	
November	1-15	78,369	78,369	77,839	530	
November	16-30	92,577	92,577	92,234	343	
December	1-15	93,849	93,849	89,020	4,829	
December	16-31	101,794	101,794	99,053	2,741	

300. Since 1930 Arthur B. Parker has been the president of Stuart Milk Company and Howard B. Parker has been the treasurer of Stuart Milk Company. Since January 1938, Alfred E. Collinson has been the clerk of Stuart Milk Company. These same three men are the directors of Stuart Milk Company. There are 500 shares of stock in the Stuart Milk Company, over 200 of which are owned by Howard B. Parker and the remainder are owned by his father, Arthur B. Parker.

301. The buildings at 40 Lake Street, Somerville, Massachusetts, which is the address of the plant of Stuart Milk Company and of the principal place of business in Massachusetts of Green Valley Creamery, Inc., are owned by the Dairy Realty Company. The Stuart Milk Company owns the equipment, fixtures, and furniture in those buildings Green Valley Creamery, Inc., owns nothing at 40 Lake Street, Somerville, Massachusetts, except its books of account. Green Valley Creamery, Inc., does not reut office space from the Stuart Milk Company. The same book-

keeper keeps the books of Stuart Milk Company and Green Valley Creamery, Inc. All checks of Green Valley Creamery, Inc., are drawn by Howard B. Parker at the office at

40 Lake Street, Somerville, Massachusetts.

302. Prior to February 4, 1937, the Stuart Milk Company was known as the W. E. Stuart Company. The W. E. Stuart Company owned the plant at Passumpsic, Vermont, prior to its sale to Green Valley Creamery, Inc. From 1930 to 1932 the W. E. Stuart Company bought milk from producers at the plant at Passumpsic, Vermont. From 1932 until some time in 1934 the plant was closed. In 1934 Green Valley Creamery, Inc., purchased the plant at Passumpsic, Vermont, from the Stuart Milk Company for an unknown amount of cash and a \$9.000.00 mortgage. The mortgage was subsequently foreclosed early in 1938. At the present time the plant at Passumpsic, Vermont, is owned by Stuart Milk Company and is operated by Green Valley Creamery, Inc. There is no written contract or lease between Green Valley Creamers, Inc. and the Stuart Milk Company. The agreement by which the Green Valley Creamery, Inc. operates the Passumpsic plant which belongs to the Stuart Milk Company was made by discussion between Otis H. Parker, Howard B. Parker, and Alfred E. Collinson some time subsequent to January 20, 1938. The agreement was not approved at any meeting of the boards of directors of either company.

303. Howard B. Parker as general manager and treasurer of Green Valley Creamery, Inc. supervises the purchases and sales of milk by that company. He has general supervision of the making of any contracts with other handlers for the purchase and sale of milk. The same Howard B. Parker as treasurer and general manager of Green Valley Creamery, Inc. has general supervision of the making of contracts for the purchase and sale of milk on

behalf of the Stuart Milk Company.

304. Between August 1 and December 31, 1937, there was no written contract or oral agreement between Green Valley Creamery, Inc. and Stuart Milk Company for the

sale of milk. Howard B. Parker testified that the Stuart Milk Company purchased milk from Green Valley Creamery, Inc. on the basis of what it believed to be a fair value for the product, taking into consideration the elements which enter into that determination.

305. Howard B. Parker as general manager of Green Valley Creamery, Inc. determined at what price Green Valley Creamery, Inc. would sell milk to Stuart Milk Company in the delivery period August 1-15, 1937, and as general manager of Stuart Milk Company determined whether or not Stuart Milk Company would pay that price. The price which Stuart Milk Company was to pay Green Valley Creamery, Inc. was determined after the end of the delivery period in which the milk was delivered.

306. The milk which is purchased from Green Valley Creamery, Inc. by Stuart Milk Company is transported in jugs by motor vehicle from the plant at Passumpsic, Vermont, to the plant of Stuart Milk Company in Somerville, Massachusetts. The Stuart Milk Company own the jugs, and they bear the name of either the Stuart Milk Company or the W. E. Stuart Company. None of the jugs are owned by Green Valley Creamery, Inc. When the milk is shipped to the Stuart Milk Company there is a tag placed on the jug notifying the truck company that when the jug is empty it is to be returned to Green Valley Creamery, Inc. at Passumpsic, Vermont.

307. There is an arrangement between Stuart Milk Company and Green Valley Creamery, Inc. whereby Stuart Milk Company, so far as it can, buys all of the milk which it re-

quires through Green Valley Creamery, Inc.

308. During the year 1937 the defendant Green Valley Creamery, Inc. received all of the milk which it purchased from producers at the plant in Passumpsic, Vermont, which is in the 19th zone, and the milk was shipped to Boston in less than carload lots. For each delivery period in 1937 Green Valley Creamery, Inc. paid to its producers the following prices per hundredweight for 3.7 milk:

January	1-15				\$2.14
	16-31				2.14
February	1-15				2.11
"	16-28		•		2.08
March	1-15				2.01
	16-31			•	1.92
April	1-15		. :	1	1.84
	16-30			**	1.74
May	1-15				1.72
"	16-31				1.72
June -	1-15			m	1.72
44	16-30				1.70
July	1-15				1.97
"	16-31		•		2.07
August	1-15			× 1	2.002
	16-31			4	2.03
Septembe	r 1-15				2.041
	16-30		1		2.024
October	1-15	•	.*		2.011
. "	16-31				2.142
Novembe	r 1-15		1	:	2.25
- 66 .	16-30	PR-07			2.30
December	r 1-15				2.264
44	16-31	•			2.127

Failure to Report

309. As of November 30, 1937, the defendant Green Valley Creamery, Inc. had failed to submit any report to the Market Administrator for the delivery period November 1 to 15, 1937.

Bills and Statements Rendered to Green Valley Creamery, Inc.

310. The Market Administrator computed and rendered a bill to the Green Valley Creamery, Inc. for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to the Green Valley Creamery, Inc. were computed in the manner

described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. All bills rendered to Green Valley Creamery, Inc. were similar in form to the bill rendered A. J. Robinson for the delivery period October 1 to 15, 1937, which is attached to this report as Exhibit 28.

311. The following table shows the amount for which bills and statements were rendered to Green Valley Creamery, Inc. for each delivery period between August 1, 1937, and December 31, 1937:

Amounts of Billings and Adjustments in Billings to the Green Valley Creamery, Inc., for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to and Including December 31, 1937.

		Produce Original	er Settlement Adjustment	Marketing Services	Market Adminis- tration
August	1-15	\$610.63		\$22.45	\$22.45
August	16-31	807.04		23.66	23.66
September	1-15	863.59	•	23.63	23.63
September	16-30	920.91	•	24.44	24.44
October	1-15	873.17		22.76	22.76
October	16-31	676.25		22.48	22.48
November	1-15	314.68		15.67	15.67
November	16-30.	324.84	•	18.52	18.52
December	1-15	310.94	\$39.02 (Dr.)	18.77	18.77
December	16-31	493.21	26.04 (Dr.)	20.36	20.36

^{312.} As of January 26, 1938, the Green Valley Creamery, Inc. had made no payments to the Market Administrator in liquidation of the bills and statements rendered (Exs. 150-151).

UNITED STATES ET AL. V. A. J. McNeil & Sons, No. 4540

The Defendant

313. The defendant A. J. McNeil & Sons, Inc. is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 177 Worcester Street in the town of Wellesley in said Commonwealth, where it operates as the Fairview Creamery.

314. A. J. McNeil & Sons, Inc. is engaged in the business of receiving, buying, processing, selling, and distributing milk and is a handler of milk as defined in the order. In each delivery period between August 1, 1937, and December 15, 1937, A. J. McNeil & Sons, Inc. reported to the Market Administrator that it purchased all of the milk which it handled from other handlers. All of the milk so purchased by A. J. McNeil & Sons, Inc. from other handlers was sold and distributed by it in the marketing area.

315. The following table shows the amount of milk purchased by A. J. McNeil & Sons, Inc. from other handlers and its disposition in each delivery period between August 1 and December 15, 1937.

.A. J. McNail & Sons, Inc.

DISPOSITION OF MILK

ECEIPTS OF MILK

	(in		(in pounds)	
Period		From other handlers	Total	Sold for Class I Purposes in and outside marketing area
August	1-15 .	34,850	. 34,850	. 34,850
August 1	6-31	39,525	39,525	39,525
September	1-15	42,300	42,500	42,500
September :	16-30	45,645	45,645	45,645
October	1-15	43,605	43,605	43,605
October	16-31	44,200	44,200	44,200
November	1-15	44,030	44,030	44,030
November 1	6-30	43,265	43,265	43,265
December	1-15	41,255	41,255	41,255

Failure to Report

316. As of November 30, 1937, A. J. McNeil & Sons, Inc. had failed and refused to submit any reports to the Market Administrator for any delivery period between August 1 and November 15, 1937. As of January 25, 1938, A. J. McNeil & Sons, Inc. failed and refused to file any report with the Market Administrator for the delivery period December 16-31, 1937, and the delivery period January 1-15, 1938.

UNITED STATES ET AL. V. W. P. ELLIOTT COMPANY, No. 4521

The Defendant

317. The defendant W. P. Elliott Company is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its present place of business at 90 Sanderson Avenue, in the city of Lynn in the Commonwealth of Massachusetts.

318. The W. P. Elliott Company is engaged in the business of receiving, buying, processing, selling, and distributing milk and is a handler of milk as defined in the order.

319. In each delivery period between August 1, 1937, and December 31, 1937, all of the producers delivering milk to the W. P. Elliott Company resided in the State of Maine. Practically all of the milk so received at the plant of the W. P. Elliott Company at Lynn, Massachusetts, was distributed and sold in the marketing area.

320. The W. P. Elliott Company from time to time purchases from other handlers and distributes and sells in the marketing area milk which has been received by such handlers from producers located outside of the Commonwealth of Massachusetts and transported in interstate commerce into the marketing area.

321. The following table shows the amount of milk purchased by the W. P. Elliott Company from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition

which was made of the milk:

W. P. ELLIOTT Co.

RECRIPTS OF MILK (in pounds)				((in pounds)		
Period		From producers	From other handlers	Total	Sold for Class I purposes in and out- side mar- keting area	Sold for Class II purposes in and out- side mar- keting area	
August	1-15	52,530		52,530	51,255	1,275	
August -	16-31	53,125		53,125	51,765	1,360	
September	1-15	50,150	7 4 4	50,150	48,875	1,275	
September	16-30	50,320	4	50,320	49,045	1,275	
October	1-15	50,830	1,705	52,535	51,260	1,275	
October	16-31	54,230	1,190	55,420	54,060	1,360	
November	1-15	48,280	4,165	52,445	51,170	1,275	
November	16-30	47,685	5,100	52,785	51,510	1,275	
December	1-15	46,090	2,210	48,300	47,025	1,275	
December	16-31	53,975	595	54,570	53,210	1,360	

Failure to Report

322. As of November 30, 1937, the Market Administrator had received no reports from the W. P. Elliott Company for each delivery period between August 1, 1937, and November 15, 1937.

Bills and Statements Rendered to the W. P. Elliott Company

323. The Market Administrator computed and rendered a bill to the W. P. Elliott Company for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to the W. P. Elliott Company were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended if it be held that the W. P. Elliott Company is subject to the order. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. A copy of the bill rendered the W. P. Elliott Company for the period October 1-15, 1937, and which in form is typical of all bills rendered by the Administrator to the

W. P. Elliott Company is hereto annexed and marked Exhibit 29.

324. The following table shows the amounts for which bills and statements were rendered to the W. P. Elliott Company for each delivery period between August 1, 1937, and December 31, 1937.

Amounts of Billings to the W. P. Elliott Co. for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to and Including December 31, 1937.

		Producer Settlement	Marketing Services	Market Administration
August	1-15	\$267.03	\$10.51	\$10.51
August	16-31	254.73	10.63	10.63
September	1-15	350.89	10.03	10.03
September	16-30	360.90	10.06	10.06
October	1-15	370.69	10.17	10.17
October	16-31	308.58	10.85	10.85
November	1-15	178.57	9.66	9.66
November	16-30	151.73	9.54	9.54
December	1-15	155.53	9.22	9.22
December	16-31	255.92	10.80	10.80

325. As of January 26, 1938, the defendant W. P. Elliott Company had paid the following amounts in liquidation of the market administration charges billed to it for the delivery periods August 1 to December 31, 1937:

August	1 to 15	. \$ 10.51
"	16 to 31	10.63
Sept.	1 to 15	10.03
***	16 to 30	_ 10.06
Oct.	1 to 15	_ 10.17
44	16 to 31	10.85
Nov.	1 to 15	9,66
44	16 to 30	9.54
Dec.	1 to 15	9.22
"	16 to 31	-

326. As of January 26, 1938, the defendant W. P. Elliott Company had paid nothing in liquidation of the bills and statements rendered to it by the Market Administrator for the delivery periods August 1 to December 31, 1937, except as shown in the table set forth above.

United States et. al. v. F. W. Large and John E. Burr, No. 4529

The. Defendants

- 327. Defendants F. W. Laroe and John E. Burr, doing business under the trade name Laroe and Burr, are citizens and residents of the Commonwealth of Massachusetts and reside in the town of Beverly therein and have their principal place of business at 14 King Terrace in said town and Commonwealth.
- 328. Defendants Laroe and Burr are handlers of milk as defined in the order and are engaged in the business of receiving, buying, processing, selling and distributing the milk.
- 329. In each delivery period in the month of August, 1937, defendants Laroe and Burr received part of their milk from producers residing in the Commonwealth of Massachusetts and the remainder of their milk from producers residing in the State of New Hampshire. In each delivery period between September 1, 1937, and December 31, 1937, all of the producers delivering milk to defendants Laroe and Burr resided in the Commonwealth of Massachusetts. The greater part of milk received by Laroe and Burr in each delivery period between August 1 and December 31, 1937, was distributed and sold by Laroe and Burr in the Boston marketing area.

330. Defendants Laroe and Burr from time to time purchase from other handlers and distribute and sell in the marketing area milk which has been received by such handlers from producers located outside of the Commonwealth of Massachusetts and transported in interstate commerce into the marketing area.

331. The following table shows the amount of milk purchased by Laroe and Burr from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk:

LARGE & BURR

RECEIPTS OF MILE

Disposition or Milk (in pounds)

Period		From producers	From other		Bold for Class I purposes in and out- side mar- keting area	Bold for Class II purposes in and out- side mar- keting area
August	1-15	27,976	447	28,423	28,242	181
August	16-31	31,089	998	32,087	30,143	1,944
September	1-15	28,825	860	29,685	28,038	1,647
September	16-30	29,525		29,525	27,586	1,939
October.	1-15	29,775		29,775	28,459	1,316
October	16-31	30,615	688	31,303	29,738	1,565
November	1-15	28,419	344	28,763	27,687	1,076
November	16-30	28,616	215	28,831	27,047	1,784
December	1-15	29,196		29,196	26,614	2,582
December	16-31	31,736		31,736	27,683	4,053

^{*} All reported disposed of in marketing area:

Failure to Report

332. As of November 30, 1937, the Market Administrator had received no reports from defendants F. W. Laroe and John E. Burr, doing business under the trade name of Laroe and Burr, for each delivery period between August 1, 1937, and November 15, 1937.

Bills and Statements Rendered to Large and Burr

333. The Market Administrator computed and rendered a bill to Laroe and Burr for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to Laroe and Burr were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. All bills rendered to Laroe and Burr were similar in form to the bill which was rendered the W. P. Elliott Company for the delivery period October 1-15, 1937, and which is annexed to this report as Exhibit 29.

334. The following table shows the amounts for which the bills and statements were rendered to Large and Burr for each delivery period between August 1, 1937, and December 31, 1937:

Amounts of Billings to Laroe & Burr for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to and Including December 31,01937

		Producer Settlement	Marketing . Services	Market Administration	
August	1-15	\$39.91	\$5.60	\$5.60	
August	16-31	9.42	6.22	6.22	
September	1-15	74.40	5.77	5.77	
September	16-30	77.68	5.91	5.91	
October	1-15	90.28	5.96	5.96	
October	16-31	40.32	6.12	6.12	
November	1-15	1.98 (Cr.)	5.68	5.68	
November	16-30	14.06 (Cr.)	5.72	5.72	
December	1-15	21.24 (Cr.)	5.84	5.84	
December	16-31	21.89 (Cr.)		6.35	

335. As of January 26, 1938, defendants Large and Burr had paid the following amounts in liquidation of the market administration charges billed to them for the delivery periods August 1 to December 31, 1937:

August	1 to 15	\$	5.60
	16 to 31		6.22
Sept:	1 to 15		5.77
***	16 to 30		5.91
Oct.	1 to 15	1.	5.96
44	16 to 31		6.12
Nov.	1 to 15		5.68
46	16 to 30		5,72
Dec.	1 to 15		5.84
	16 to 31		6.35

336. As of January 26, 1938, defendants Larce and Burr had paid nothing in liquidation of the bills and statements rendered to them by the Market Administrator for the delivery periods between August 1 and December 31, 1937 except as shown in the table set forth above.

UNITED STATES ET AL. V. WHITCOMB FARMS, INC., No. 4536

The Defendant

337. The defendant Whitcomb Farms, Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its present place of business on King Street, in the town of Littleton in the Commonwealth of Massachusetts.

338. Whitcomb Farms, Inc. is engaged in the business of receiving, buying, processing, selling, and distributing milk and is a handler of milk as defined in the order.

339. In each delivery period between August 1, 1937, and December 31, 1937, all of the producers delivering milk to Whitcomb Farms, Inc. resided in the Commonwealth of Massachusetts. The greatest part of the milk so received at the plant of Whitcomb Farms, Inc. at Littleton, Massachusetts, was distributed and sold in the marketing area.

340. Whitcomb Farms, Inc. from time to time purchases from other handlers and distributes and sells in the marketing area milk which has been received by such handlers from producers located outside of the Commonwealth of Massachusetts and transported in interstate commerce into the marketing area.

341. The table on page 261 shows the amount of milk purchased by Whitcomb Farms, Inc. from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk.

Failure to Report

342. As of November 30, 1937, the Market Administrator had received no reports from Whitcomb Farms, Inc. for each delivery period between September 1, 1937, and November 15, 1937.

Master's Report

WHITCOMB FARMS, INC.

RECEIPT OF MILK (in pounds)

Perio	d		From producers	.,	From other handlers			Total
August	1-15		73,824		5,570		* .	79,394
August	16-31		79,719		912			80,631
September	1-15		73,558		7,438	,		80,996
September	16-30		75,341		7,955			83,296
October	1-15	1	83,211		1,944		-	85,155
October	16-31		87,070		4,638			91,708
November	1-15		81,241	1	4,237			85,478
November	16-30		87,352		127			87,479
December	1-15		. 80,965		172		4	81,137
December	16-31		87,087		135	4	•	87,222

DISPOSITION OF MILK (in pounds)

Distribution of Mills (in pounds)							
Period		Inside marketing area	Outside marketing area	Total Class I	Class II (in and outside marketing area)	Total	
August	1-15	60,053	15,319	75,372	4,022	79,394	
August	16-31	62,440	16,316	78,756	1,875	80,631	
September	1-15	63,270	12,891	76,161	4,835	80,996	
September	16-30	69,907	10,834	80,741	2,555	83,296	
October	1-15	72,952	10,806	83,758	1,397	85,155	
October	16-31	79,935	11,288	91,223	485	91,708	
November	1-15	74,190	9,473	83,663	. 1,815	85,478	
November :	16-30	74,113	9,209	83,322	4,157	87,479	
December	1-15	57,733	9,185	66,918	14,219	81,137	
December	16-31	61,978	10,021	71,999	15,223	87,222	
1							

Bills and Statements Rendered to Whitcomb Farms, Inc.

343. The Market Administrator computed and rendered a bill to Whitcomb Farms, Inc., for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to Whitcomb Farms, Inc., were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. All bills rendered to Whitcomb Farms, Inc., were similar in form to the bill rendered the W. P. Elliott Company for the delivery period October 1 to 15, 1937, which is attached to this report as Exhibit 29.

344. The following table shows the amounts for which bills and statements were rendered to Whitcomb Farms, Inc., for each delivery period between August 1, 1937, and December 31, 1937:

Amounts of Billings to Whitcomb Farms, Inc., for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to December 31, 1937

	U,	Producer Settlement	Marketing Services	Market Administration	
August	1-15	\$84.25	\$6.59	\$14.76	
August .	16-31	43.77	7.16	15.94	
September	1-15	132.92	6.36	14.71	
September '	16-30	178.16	6.34	15.07	
October	1-15	227.42	8.00	16.64	
October	16-31	148.57	8.41	. 17.41	
November	1-15	20.84	8.53.	16.25	
November	16-30	11.02 (Cr.)		17.38	
December	. 1-15	137.29 (Cr.)		16.19	
December	16-31	150.53	6.92	17.42	

345. As of January 3, 1938, the defendant Whitcomb Farms, Inc., had paid nothing in liquidation of the bills and statements rendered to it by the Market Administrator. Subsequent to that date the defendant Whitcomb

Farms, Inc. paid to the Market Administrator all amounts for which bills and statements had been rendered to it by the Market Administrator for the delivery periods August 1 to December 31, 1937.

United States et al. v. Mason's Creamery Company, No. 4550

The Defendant

346. The defendant Mason's Creamery Company is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 32 Sydney Avenue, in the city of Lynn in the Commonwealth of Massachusetts.

347. Mason's Creamery Company is a handler of milk as defined in the order and is engaged in the business of receiving, buying, processing, selling, and distributing milk.

348. In each delivery period between August 1, 1937, and December 31, 1937, all of the producers delivering to Mason's Creamery Company resided in the state of Maine. All of the milk received from producers by Mason's Creamery Company was received at its plant in Lynn, Massachusetts, and the greater part of that milk was distributed and sold in the marketing area.

349. Mason's Creamery Company from time to time purchases from other handlers and distributes and sells in the marketing area milk which has been received by such handlers from producers located outside of the Commonwealth of Massachusetts and transported in interstate commerce into the marketing area letters.

merce into the marketing area.

350. The following table shows the amount of milk purchased by Mason's Creamery Company from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk:

Master's Report

RECEIPTS OF MILE (in pounds)

Period	1	. 1	From producers	From other handlers		Total
August	1-15	* 1	41,480	1,190		42,670
August '	16-31		44,965	5,440		50,405
September	1-15		42,330	5,695		48,025
September	16-30		42,755	7,310		50,065
October	1-15		45,603	1,870	:	47,473
October	16-31		44,485	4,420		48,905
November	1-15		38,590	9.945		48,535
November	16-30		43,520	5,355		48,875
December	1-15		AA OCE	3,955		48,920
December	16-31		47,430	3,655		51,085

DISPOSITION OF MILK (in pounds)

		Sold for Cla	Sold for Class II	
Perio	d	Inside marketing area	Outside marketing area	purposes (in and outside marketing area),
August	1-15	36,179		6,491
August	16-31	38,179		12,226
September	1-15 .	36,757	*	11,268
September	16-30	36,401		13,664
October	1-15	35,581		11,892
October	16-31	38,418		10,487
November	~ 1-15	36,816		11,719
November	16-30	35,904		12,971
December	1-15	36,032		12,888
December	16-31	37,492		13,593

Failure to Report

351. As of November 30, 1937, the Market Administrator had received no report from the defendant Mason's Creamery Company for the delivery periods September 16-30, October 1-15, October 16-31, and November 1-15, 1937.

Bills and Statements Rendered to Mason's Creamery Company

a bill to Mason's Creamery Company for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to Mason's Creamery Company were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. All bills rendered to Mason's Creamery Company were similar in form to the bill which was rendered the W. P. Elliott Company for the delivery period October 1-15, 1937, and which is annexed to this report as Exhibit 29.

353. The following table shows the amounts for which bills and statements were rendered to Mason's Creamery Company for each delivery period between August 1, 1937, and December 31, 1937:

Amounts of Billings to Forrest E. Mason, doing business as Mason's Creamery Co., for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to and Including December 31, 1937

		Producer Settlement	Marketing Services	Market Administration
August	1-15	\$142.50	\$8.30	\$8.30
August	16-31	44.71	8.99	8.99
September	1-15	142.59	8.47	8.47
September	16-30	131.62	8.55	8.55
October	1-15	166.62	9.12	9.12
October	16-31	113.82	8.90	8.90
November	1-15	74.15	7:72	7:72
November	16-30	52.08	8.70	8.70
December	1-15	2.12	8.99	8.99
December	16-31	48.47	9.49	9.49

354. As of January 26, 1938, the defendant Mason's Creamery Company had paid the following amounts in liquidation of the Market Administration charges billed to it for the delivery periods August 1 to December 31, 1937:

August	1 to 15	\$ 8.30
**	16 to 31_	8.99
Sept.	1 to 15.	8.47
1	16 to 30	8.55
Oct.	· 1 to 15	 9.12
- 44	16 to 31	 8.90
Nov.	1 to 15	7.72
44	16 to 30	 8.70
Dec.	1 to 15_	8.99
66	16 to 31	 9.49
er:		

355. As of January 26, 1938, the defendant Mason's Creamery Company had paid nothing in liquidation of the bills and statements rendered to it by the Market Administrator for the delivery periods August 1 to December 31, 1937, except as shown by the table set forth above.

Respectfully Submitted,

WILLIAM A. LOUGHLIN,

Master.

January 27, 1939.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,

DISTRICT OF MASSACHUSETTS, SS.

I, James S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the three volumes, entitled as follows:

Volume I., Pleadings;
Volume II., Report of Special Master
(Findings of Facts)
Volume III., Report of Special Master
(Exhibits Appended)

constitute the transcript of the record on the appeals of the defendants, including true copies of such proofs, entries and papers on file as have been designated by the stipulation of parties as to the contents of the record on appeal, in the cause entitled

No. 4519, EQUITY DOCKET,

UNITED STATES OF AMERICA AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE, PLAINTIFFS,

H. P. HOOD & SONS, INC., ET AL., DEFENDANTS,

in said District Court determined.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, at Boston, in said District, this twenty-first day of March, A. D. 1939.

[SEAL]

JAMES S. ALLEN, Clerk.



CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the three volumes, entitled as follows:

Volume I., Pleadings;

Volume II., Report of Special Master (Findings of Fact); Volume III., Report of Special Master (Exhibits Appended)

this certificate being attached to each of said three volumes, contain and are a true copy of the record and all proceedings to, and including, March 22, 1939, in the cause in said court numbered and entitled, No. 3445.

H. P. HOOD & SONS, INC., ET AL., DEFENDANTS, APPELLANTS,

UNITED STATES OF AMERICA ET AL., PLAINTIFFS, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twenty-second day of March, A. D. 1939.

[SEAL]

ARTHUR I. CHARRON, Clerk.

Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States
OCTOBER TERM, 1938

No. 772

H. P. HOOD & SONS, INC., AND NOBLE'S MILK COMPANY, PETITIONERS,

US.

THE UNITED STATES OF AMERICA AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE

PETITION FOR CERTIORARI FILED MARCH 24, 1939. CERTIORARI GRANTED MARCH 27, 1939.

No. 865

E. FRANK BRANON, PETITIONER,

\$3.

THE UNITED STATES OF AMERICA AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE

PETITION FOR CERTIORARI FILED APRIL 12, 1939. CERTIORARI GRANTED APRIL 17, 1939.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIRST CIRCUIT

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3445:

H. P. HOOD & SONS, Inc., ET AL.,

DEFENDANTS, APPELLANTS,

UNITED STATES OF AMERICA ET AL.,

PLAINTIFFS, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS,
FROM FINAL DECREE (SWEENEY, J.), MARCH 9, 1939.

TRANSCRIPT OF RECORD.

VOLUME III.
REPORT OF SPECIAL MASTER.
(EXHIBITS APPENDED.)

CHARLES B. RUGG, "ROPES, GRAY, BOYDEN & PERKINS, EDWARD L. MERRILL, MERRILL & MERRILL,

HUGH B. COX,
JAMES C. WILSON,

SPECIAL ASSISTANTS TO THE ATTORNEY GENERAL,

for Appellees.



TABLE OF EXHIBITS ATTACHED TO MASTER'S REPORT.

LUDIN OL	Likeling in the control of the contr	~	0
Exhibit Nos		Reference Paragraph	Printed Page
1, la	Creamery Table and Letter	54	1
2-2d, incl.	NED Producer Contracts	59	2
3	NED Cooperative Contract	59	18
4-4d, incl.	NEMPA Producer Contracts	59	25
5	NED Articles and By-Laws	59	48
6	NEMPA Articles and By-Laws	59	57
7	Butter Prices	85	74
. 8	Meeting of Mass. Milk Control Board	101	76
9-9c, incl.	Four Letters to Handlers	110	91
10	Blended Price Announcements	139	101
11	Municipal Health Regulations	168	156
12	Handlers' Certificates and Licenses	169	156
13	Handlers Excluded from Computations	183	156
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16	Tabulation from National Index	215	162
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18	Wholesale Milk Prices, 1909-1936	216	201
19	Hood Bill	235	210
20	Hood Plant Notices	242	210
21	Tabulation, Hood and Blended Prices	242	227
22 ,	Noble's Plant Notices	244	227
23	Tabulation, Noble's and Blended Prices	244	244
24	Tabulation, Branon Milk	246	244
25	Whiting Bill	260	245
26	Whiting Plant Notices	261	245
27	Tabulation, Whiting and Blended Prices	261	255
28	A. J. Robinson (Mountainview Cream-		
	ery) Bill	275	255
29	W. P. Elliott Co. Bill	323	25 5



In the District Court of the United States for the District of Massachusetts

No. 4519

UNITED STATES ET AL.

v.

H. P. HOOD & SONS, INC., AND NOBLE'S MILK COMPANY

No. 4520

SAME v. THE WHITING MILK COMPANY

No. 4521

SAME v. W. P. ELLIOTT COMPANY

No. 4522

SAME v. GREEN VALLEY CREAMERY, INC.

No. 4529

SAME v. F. W. LAROE AND JOHN E. BURK

No. 4530

SAME v. A. J. ROBINSON

No. 4539

SAME v. WHITCOMB FARMS, INC.

No. 4540

SAME v. A. J. McNEIL & SONS

No. 4543

SAME v. WM. T. JONES COMPANY

No. 4544

SAME v. WESTWOOD FARM MILK COMPANY

No. 4550

SAME v. MASON'S CREAMERY COMPANY



EXHIBIT 1.

VERMONT AGRICULTURAL REPORT

SUMMARY OF VERMONT DAIRY STATISTICS SHOWING DISTRIBUTION OF PRODUCT 1935.

9	Number of Plants	Pounds	%
Fluid Milk Shipped	90	462,021,281	44.48
Fluid Milk Made Into Chedder Cheese		7,616,363	73
Fluid Milk Made Into Sweet Cream			1
Shipped	69	496,450,800	47.80
Fluid Milk Made Into Cream Sold Lo-	24.		
cally		6,661,325	.65
Fluid Milk Made Into Ice Cream and			
Ice Cream Mix	. 3	1,822,150	18
Fluid Milk Made Into Butter	.36	55,906,375	5.38
Fluid Milk Sold Locally		7,496,696	.72
Fluid Milk Made Into Cream Cheese			
and Other Varieties of Soft Cheese		392,668	.04
Fluid Milk Condensed and Evaporated		184,829	.03
Total Fluid Milk Distribution		1,038,552,487	100.00
Skim Shipped	- 35	48,319,071	
Skim Shipped Skim Made Into Casein	37	135,155,727	
Skim Condensed and Evaporated	7	63,372,695	
Skim Magle Into Powder		56,739,331	
Skim Made Into Cottage and Soft		ANG D	
Checke Skim Returned to Farmers	10	6,183,156	
Skim Returned to Farmers	32	62,890,135	
Skim Otherwise Utilized	8	17,719,558	- 2

EXHIBIT 1a.

January 10, 1928.

Mr. David Greer, 11 Beacon Street, Boston, Mass.

Dear Sir:

In connection with the percentage distribution of milk and cream receipts in Vermont for the various years as published on page 58 of the 18th Biennial Report of the Commissioner of Agriculture, State of Vermont, for 1935-36, the

correct figures for 1935 will be found on page 56 and not as erroneously reported on page 58 of the same report.

H. E. Bremer Creamery Inspector.

EXHIBIT 2.

New England Dairies, Inc. Membership Agreement

Whereas, New England Dairies, Inc. hereinafter called Association, is a cooperative Association duly organized under the Cooperative Marketing Act of the State of Vermont, having its principal place of business in Barre in said State, said association having been organized for the purpose of minimizing speculation and waste in the marketing of dairy products and for the further purpose of performing services for producers of dairy products in connection with the production, marketing, selling, manufacture and other utilization of milk and milk products, and

Whereas, the undersigned is a producer of dairy products and desires to avail himself of the services of said Association for the marketing or other utilization thereof:

Therefore, in consideration of the mutual covenants herein contained, it is hereby agreed I tween said Association on the one hand, and the producer, hereinafter called Member, on the other hand as follows:

1. Member by the execution of this agreement agrees to become a member of Association and when said Association's Articles of Incorporation and By-laws shall have been amended to provide for individual producer memberships, shall be admitted as a member and shall be bound by the by-laws, rules and regulations of the Association as the same may from time to time be in effect.

2. Member hereby appoints Association as the sole and exclusive agent to sell or otherwise market all milk and cream owned and/or controlled by Member during the

period of this agreement except such as is retained for consumption on the premises where produced or is released by the Association. Member grants to Association full power and authority to sell such milk and cream in its own name to such parties and at such prices, terms and conditions as Association shall determine.

3. The Member agrees that said milk or cream shall be delivered at such plants, shipping stations, or other places as Association shall from time to time direct, it being agreed that said milk or cream shall be produced, kept and delivered under sanitary conditions in conformity with Association requirements and the laws and Board of Health rules and regulations of the state and locality where such milk is produced and marketed.

4. The Member hereby grants to Association full power and authority to collect in its name all monies due or to become due to the Member for milk or milk products marketed by Member. Association may, at its own election, authorize the dealer to whom said milk or milk products are sold to remit in whole or in part directly to Member. A copy of this agreement certified to by the authorized agent of Association shall constitute authority to the dealer to pay for products sold to said dealer as Association may from time to time direct.

- 6. In event that the Member and other members delivering milk to the plant acquired under the provisions of paragraph five (5) hereof shall form a cooperative association which shall desire to purchase said plant and equipment, Association agrees that it will sell such plant and equipment to said cooperative association at a pice not exceeding the cost of said plant and equipment including the cost of any improvement and additions thereto, provided that if said cooperative association shall exercise its rights to purchase said plant and equipment within the period of three years from the effective date hereof, said cooperative association shall simultaneously with such sale enter into marketing agreement with Association upon the same terms and conditions as are contained in the marketing agreements between Association and its other cooperative association members for such period as shall remain between the date of the exercise of said right and the date of expiration of three years from the effective date hereof.
- 7. Inasmuch as the remedy at law would be inadequate and inasmuch as it is impracticable and extremely difficult to determine the actual damage resulting to Association, should the Member fail to deliver milk and cream in accordance with the terms hereof, regardless of the cause of such

failure, Member hereby agrees to pay to Association for all rilk and cream delivered or disposed of by or for him, of er than in accordance with the terms hereof, the sum of fat. (50) cents per hundredweight of milk or its equivalent as liquidated damages for the breach of this agreement; the parties agreeing that this agreement is one of a series substantially identical in terms and dependent for its true value upon the adherence of each and all of the contracting parties to each and all of the said agreements, but the cancellation of this agreement or the failure of Member to comply therewith shall not affect other similar agreements.

9. This agreement shall supersede and terminate all contracts, agreements, or arrangements, heretofore made by Munber with respect to the sale of his milk or cream, subject however, to existing contracts with other parties which Member hereby agrees not to renew and to terminate at the earliest possible date.

IN WITNESS WHEREOF, parties hereto have executed this agreement this day of 193.

Member ... By
Shipping
Address Station

In behalf of the committee it is agreed that this contract shall be held in the hands of the committee until at least two other Hood plants are ready to carry through a similar plant-ownership-program, or until 75% of the milk covered by this contract agrees to proceed with a plan approved and adopted by them.

> JERRY MARTIN, Chairman Norman Hunter, Secretary, Lancaster Milk Producers' Committee

\$..... 1937 Place Date

On demand after date I promise to pay to New England Dairies, Inc. or order

Dollars with Interest at the rate of four per cent (4%) per annum.

Value received.

Payable at Springfield Bank of Cooperatives
Springfield, Massachusetts

EXHIBIT 2a.

LISBON RIDER

The Member signs upon condition that New England Dairies shall operate a receiving plant at Lisbon for accommodation of Member, for which Member shall pay 3¢ per hundredweight. Type of receiving plant to be later determined by New England Dairies and North Haverhill Committee.

EXHIBIT 2b.

New England Darries, Inc. Membership Agreement

WHEREAS, New England Dairies, Inc. hereinafter called Association, is a cooperative association duly organized

under the Cooperative Marketing Act of the State of Vermont, having its principal place of business in Barre in said State, said Association having been organized for the purpose of minimizing speculation and waste in the marketing of dairy products and for the further purpose of performing services for producers of dairy products in connection with the production, marketing, selling, manufacture and other utilization of milk and milk products, and

Whereas, the undersigned is a producer of dairy products and desires to avail himself of the services of said Association for the marketing or other utilization thereof:

Therefore, in consideration of the mutual covenants herein contained, it is hereby agreed between said Association on the one hand and the producer, hereinafter called Member, on the other hand as follows:

1. Member by the execution of this agreement agrees to become a member of Association and when said Association's Articles of Incorporation and By-laws shall have been amended to provide for individual producer membership, shall be admitted as a member and shall be bound by the by-laws, rules and regulations of the Association as the same may from time to time be in effect.

2. Member hereby appoints Association as the sole and exclusive agent to sell or otherwise market all milk or cream owned and/or controlled by Member during the period of this agreement except such as is retained for consumption on the premises where produced or is released by the Association. Member grants to Association full power and authority to sell such milk and cream in its own name to such parties and at such prices, terms and conditions as Association shall determine.

3. The Member agrees that said milk or cream shall be delivered at such plants, shipping stations, or other places as Association shall from time to time direct, it being agreed that said milk or cream shall be produced, kept and delivered under sanitary conditions in conformity with Association requirements and the laws and Board of Health rules and

regulations of the state and locality where such milk is produced and marketed.

- 4. The Member hereby grants to Association full power and authority to collect in its name all monies due or to become due to the Member for milk or milk products marketed by Member. Association may, at its own election, authorize the dealer to whom said milk or milk products are sold to remit in whole or in part directly to Member. A copy of this agreement certified to by the authorized agent of Association shall constitute authority to the dealer to pay for products sold to said dealer as Association may from time to time direct.
- 5. Association agrees that it will sell milk or cream together with the milk or cream of other members and that it will pay Member the proceeds received from the sale of said milk or cream ratably less costs of handling, operations, supervision, "New England Dairyman", (for which Member hereby subscribes) and other costs and expenses of conducting the business and operations of Association including such amounts as may be set aside as reserves for capital and other purposes and as determined by the Board of Directors. For the purpose of creating special funds to be used to build or otherwise acquire plant and equipment at withhold from the amounts due Member hereunder over a period of three years such additional sum as may be necessary to provide from Member and other members deliver-cost of such plant and equipment. After the close of each fiscal year Member shall receive a certificate in such form and on such terms and conditions as the Board of Directors of Association may from time to time determine evidencing monies contributed to said special funds and establishing Member's prior interest in said plant and equipment. The Board of Directors shall have the right to establish equitable differentials with respect to grades, quality, quantity, location and variation in amount of product delivered.

- 6. In event that the Member and other members delivering milk to the plant acquired under the provisions of paragraph five (5) hereof shall form a cooperative association which shall desire to purchase said plant and equipment, Association agrees that it will sell such plant and equipment to said cooperative association at a price not exceeding the cost of said plant and equipment including the cost of any improvement and additions thereto, provided that if said cooperative association shall exercise its right to purchase said plant and equipment within the period of three years from the effective date hereof, said cooperative association shall simultaneously with such sale enter into a marketing agreement with Association upon the same terms. and conditions as are contained in the marketing agreements between Association and its other cooperative association members for such period as shall remain between the date of the exercise of said right and the date of expiration of three years from the effective date hereof.
- 7. Inasmuch as the remedy at law would be inadequate and inasmuch as it is impracticable and extremely difficult to determine the actual damage resulting to Association, should the Member fail to deliver milk and cream in accordance with the terms hereof, regardless of the cause of such failure, Member hereby agrees to pay to Association for all milk and cream delivered or disposed of by or for him, other than in accordance with the terms hereof, the sum of fifty (50) cents per hundredweight of milk or its equivalent as liquidated damages for the breach of this agreement; the parties agreeing that this agreement is one of a series cubstantially identical in terms and dependent for its true value upon the adherence of each and all of the contracting parties to each and all of the said agreements, but the cancellation of this agreement or the failure of Member to comply therewith shall not affect other similar agreements.
- 8. This agreement shall become effective when in the determination of the Board of Directors of Association producers who delivered.....jugs of milk average per day at the Colebrook, New Hampshire, plants of the H. P. Hood

& Sons, Inc., and the Whiting Milk Cos., during the twelve months ending November 30, 1936 shall execute agreements similar hereto and shall be continuous in its operation subject to any limitations imposed by law unless cancelled and terminated on the 1st day of March in any calendar year after 1940 upon written notice of intention to so cancel given by either party to the other between the 1st and 15th day of December next preceding.

9. This agreement shall supersede and terminate all contracts, agreements, or arrangements, heretofore made by Member with respect to the sale of his milk or cream, subject however, to existing contracts with other parties which Member hereby agrees not to renew and to terminate at the

earliest possible date.

EXHIBIT 2c.

New England Dairies, Inc. Membership Agreement

Whereas, New England Dairies, Inc. hereinafter called Association, is a cooperative Association duly organized under the Cooperative Marketing Act of the State of Vermont, having its principal place of business in Barre in said State, said Association having been organized for the purpose of minimizing speculation and waste in the marketing of dairy products and for the further purpose of performing services for producers of dairy products in connection with the production, marketing, selling, manufacture and other utilization of milk and milk products, and

Whereas, the undersigned is a producer of dairy products and desires to avail himself of the services of said Association for the marketing or other utilization thereof:

Therefore, in consideration of the mutual covenants herein contained, it is hereby agreed between said Association on the one hand, and the producer, hereinafter called Member, on the other hand as follows:

I. Member by the execution of this agreement agrees to become a member of Association and when said Association's Articles of Incorporation and By-laws shall have been amended to provide for individual producer memberships, shall be admitted as a member and shall be bound by the by-laws, rules and regulations of the Association as the same may from time to time be in effect.

2. Member hereby appoints Association as the sole and exclusive agent to sell or otherwise market all milk or cream owned and/or controlled by Member during the period of this agreement except such as is retained for consumption on the premises where producer is released by the Association. Member grants to Association full power and authority to sell such milk and cream in its own name to such parties and at such prices, terms and conditions as Association shall determine.

3. The Member agrees that said milk or cream shall be delivered at such plants, shipping stations, or other places as Association shall from time to time direct, it being agreed that said milk or cream shall be produced, kept and delivered under sanitary conditions in conformity with Association requirements and the laws and Board of Health rules and regulations of the state and locality where such milk is produced and marketed.

4. The Member hereby grants to Association full power and authority to collect in its name all monies due or to become due to the Member for milk or milk products marketed by Member. Association may, at its own election, authorize the dealer to whom said milk or milk products are sold to remit in whole or in part directly to Member. A copy of this agreement certified to by the authorized agent

of Association shall constitute authority to the dealer to pay for products sold to said dealer as Association may from time to time direct.

5. Association agrees that it will sell said milk or cream together with the milk or cream of other members and that it will pay Member the proceeds received from the sale of said milk or cream ratably less costs of handling, operations, supervision, "New England Dairyman", (for which Member hereby subscribes) and other costs and expenses or conducting the business and operations of Association including such amounts as may be set aside as reserves for capital and other purposes and as determined by the Board of Directors. For the purpose of creating special funds to be used to build or otherwise acquire plant and equipment at North Haverhill in the State of New Hampshire Association may withhold from the amounts due Member hereunder over a period of three years such additional sum as may be necessary to provide from Member and other members delivering milk at said North Haverhill forty percentum (40%) of the cost of such plant and equipment. The total amount of the special deductions authorized by this section may equal but not exceed the amount of the note given by the Member. After the close of each fiscal year Member shall receive a certificate in such form and on such terms and conditions as the Board of Directors of Association may from time to time determine evidencing monies contributed to said special funds and establishing Member's prior interest in said plant and equipment. The Board of Directors shall have the right to establish equitable differentials with respect to grades, quality, quantity, location and variation in amount of product delivered.

6. In event that the Member and other members delivering milk to the plant acquired under the provisions of paragraph five (5) hereof shall form a cooperative association which shall desire to purchase said plant and equipment, Association agrees that it will sell such plant and equipment to said cooperative association at a price not exceeding the cost of said plant and equipment including the cost of any

improvement and additions thereto, provided that if said cooperative association shall exercise its rights to purchase said plant and equipment within the period of three years from the effective date hereof, said cooperative association shall simultaneously with such sale enter into a marketing agreement with Association upon the same terms and conditions as are contained in the marketing agreements between Association and its other cooperative association members for such period as shall remain between the date of the exercise of said right and the date of expiration of three years from the effective date hereof.

7. Inasmuch as the remedy at law would be inadequate and inasmuch as it is impracticable and extremely difficult to determine the actual damage resulting to Association, should the Member fail to deliver milk and cream in accordance with the terms hereof, regardless of the cause of such failure, Member hereby agrees to pay to the Association for all milk and cream delivered or disposed of by or for him, other than in accordance with the terms hereof, the sum of fifty (50) cents per hundred weight of milk or its equivalent as liquidated damages for the breach of this agreement; the parties agreeing that this agreement is one of a series substantially identical in terms and dependent for its true value upon the adherence of each and all of the contracting parties to each and all of the said agreements, but the cancellation of this agreement or the failure of Member to comply therewith shall not affect other similar agreements.

8. This agreement shall become effective when in the determination of the Board of Directors of Association 70 percent of the producers delivered 80 percent of the milk at the North Haverhill plant of Hood Inc. during the period October 15-31, 1936 shall execute agreements similar hereto and shall be continuous in its operation subject to any limitations imposed by law unless cancelled and terminated on the 1st day of March in any calendar year after 1940 upon written notice of intention to so cancel given by either party to the other between the 1st and 15th of December next preceding.

9. This agreement shall supersede and terminate all contracts, agreements, or arrangements, heretofore made by Member with respect to the sale of his milk or cream, subject however, to existing contracts with other parties which Member hereby agrees not to renew and to terminate at the earliest possible date.

In Witness Whereof, parties hereto have executed this agreement this day of 1937:

In behalf of the committee it is agreed that this contract shall be held in the hands of the committee until at least two other Hood plants are ready to carry through a similar plant-ownership-program, or until 75% of the milk covered by this contract agrees to proceed with a plan approved and adopted by them.

CLYDE DARLING, Chairman,
H. K. DAVISON, Secretary,
No. Haverhill Milk
Producers' Committee

EXHIBIT 2d.

New England Dairies, Inc.
Membership Agreement

Whereas, New England Dairies, Inc., hereinafter called Association, is a cooperative Association duly organized under the Cooperative Marketing Act of the State of Vermont, having its principle place of business in Barre in said State, said Association having been organized for the purpose of minimizing speculation and waste in the marketing of dairy products and for the further purpose of performing

services for producers of dairy products in connection with the production, marketing, selling, manufacture and other utilization of milk and milk products, and

Whereas, the undersigned is a producer of dairy products and desires to avail himself of the services of said Associa-

tion for the marketing or other utilization thereof:

Therefore, in consideration of the mutual covenants herein contained, it is hereby agreed between said Association on the one hand, and the producer, hereinafter called Member, on the other hand as follows:

1. Member by the execution of this agreement agrees to become a member of Association and when said Association's Articles of Incorporation and By-laws shall have been amended to provide for individual producer memberships, shall be admitted as a member and shall be bound by the by-laws, rules and regulations of the Association as the

same may from time to time be in effect.

2. Member hereby appoints Association as the sole and exclusive agent to sell or otherwise market all milk or cream owned and/or controlled by Member during the period of this agreement except such as is retained for consumption on the premises where produced or is retained for consumption on the premises where produced or is released by the Association. Member grants to Association fully power and authority to sell such milk and cream in its own name to such parties and at such prices, terms and conditions as Association shall determine.

3. The Member agrees that said milk or cream shall be delivered at such plants, shipping stations, or other places as Association shall from time to time direct, it being agreed that said milk or cream shall be produced, kept and delivered under sanitary conditions in conformity with Association requirements and the laws and Board of Health rules and regulations of the state and locality where such milk is produced and marketed.

4. The Member hereby grants to Association full power and authority to collect in its name all monies due or to become due to the Member for milk or milk products marketed

by Member. Association may, at its own election, authorize the dealer to whom said milk or milk products are sold to remit in whole or in part directly to Member. A copy of this agreement certified to by the authorized agent of Association shall constitute authority to the dealer to pay for products sold to said dealer as Association may from time to time direct.

5. Association agrees that it will sell said milk or cream together with the milk or cream of other Members and that it will pay Member the proceeds received from the sale of said milk or cream retably less costs of handling, operations, supervision, "New England Dairyman," (for which Member hereby subscribes) and other costs and expenses of conducting the business and operations of Association including such amounts as may be set aside as reserves for capital and other purposes all as determined by the Board of Directors. For the purpose of creating special funds to be used to build or otherwise acquire plant and equipment at Waterbury in the State of Vermont, Association may withhold from the amounts due Member hereunder over a period of three years such additional sum as may be necessary to provide from Member and other members delivering milk at said Waterbury forty percentum (40%) of the cost of such plant and equipment. After the close of each fiscal year Member shall receive a certificate in such form and on such terms and conditions as the Board of Directors of Association may from time to time determine evidencing monies contributed to said special funds and establishing Member's prior interest in said plant and equipment. The Board of Directors shall have the right to establish equitable differentials with respect to grades, quality, quantity, location and variation in amount of product delivered.

6. In event that the Member and other members delivering milk to the plant acquired under the provisions of paragraph five (5) hereof shall form a cooperative association which shall desire to purchase said plant and equipment. Association agrees that it will sell such plant and equipment

to said cooperative association at a price equal to the appraised value of such plant and equipment as determined by the Board of Directors of Association, but not exceeding the cost of said plant and equipment including the cost of any improvement and additions thereto, provided that said cooperative association shall simultaneously with such sale enter into a marketing agreement with Association upon the same terms and conditions as are contained in the marketing agreements between Association and its other cooperative association members.

71 Inasmuch as the remedy at law would be inadequate and inasmach as it is impracticable and extremely difficult to determine the actual damage resulting to Association, should the Member fail to deliver milk and cream in accordance with the terms hereof, regardless of the cause of such failure, Member hereby agrees to pay to Association for all milk and cream delivered or disposed of by or for him, other than in accordance with the terms hereof, the sum of fifty (50) cents per hundred weight of milk or its equivalent as liquidated damages for the breach of this agreement; the parties agreeing that this agreement is one of a series substantially identical in terms and dependent for its true value upon the adherence of each and all of the contracting parties to each and all of the said agreements, but the cancellation of this agreement or the failure of Member to comply therewith shall not affect other similar agreements.

8. This agreement shall be continuous in its operation subject to any limitations imposed by law unless cancelled and terminated on the 1st day of March in any calendar year after 1940 upon written notice of intention to so cancel given by either party to the other between the 1st and 15th day of December next preceding.

9. This agreement shall supersede and terminate all contracts, agreements, or arrangements, heretofore made by Member with respect to the sale of his milk or cream, subject however, to existing contracts with other parties which Member hereby agrees not to renew and to terminate at the earliest possible date.

IN WITNESS WHI	EREOF, parties hereto have executed this	3
agreement this	day of 193.	
	NEW ENGLAND DAIRIES, INC.	
Member	By	
	Shipping	
Address	Station	

EXHIBIT 3.

NEW ENGLAND DAIRIES, INC.

Marketing Contract

This agreement is made this 29 day of May, 1933 by and between the New England Dairies, Inc., a co-operative corporation organized under the laws of the state of Vermont and having a usual place of business in Boston, Commonwealth of Massachusetts, the party of the first part hereinafter called the "Central Agency" and New England Milk Producers Association a co-operative association organized under the laws of the state of Massachusetts having a usual place of business at Boston, Massachusetts in said state hereafter called the "Member Association."

Whereas the said Member Association in an effort to secure better results in the economical production, marketing and distribution of dairy products, thereby protecting and stabilizing the currents of inter-state, as well as intrastate commerce, preventing inefficiency and wasteful methods of distribution, and preventing and controlling seasonal and local surpluses and shortages by the more effective organization of marketing agencies, under the control of producers, and the co-operatives owned by them, and in accordance with the general policies and principles prescribed by the Congress of the United States in the first section of "Agricultural Marketing Act" approved June 15, 1929, has co-operated in the organization of the New England Dairies, Inc., a co-operative corporation organized under the laws of

the state of Vermont and hereinafter called the Central Agency, said parties agree as follows:

1. In consideration of the premises aforesaid and the mutual covenants and agreements of the parties hereto, and evidenced hereby, the said Member Association hereby agrees to and does hereby make, constitute and appoint the said Central Agency its sole and exclusive agent for the sale, or marketing or other disposition of all the milk and cream subject to its control. Nothing herein contained shall be construed as in derogation of the rights of the membership of the Member Association under its respective contracts with its respective members-and subject to this limitation said Member Association agrees to consign to or to have consigned daily to said Central Agency, or in accordance with its instruction, from time to time, all milk or cream produced on the farms of its members respectively and subject to its orders under its standard membership contracts. Member Association agrees that said milk and cream shall be delivered at such points and to such plants or other places as Central Agency shall from time to time designate.

Said Member Association hereby covenants and agrees that it is now organized and operated and will continue to be organized and operated in conformity with the provisions of the "Capper-Volstead Act" so called, being "an act of Congress to authorize association of producers of agricultural products" approved February 18, 1922. Said Member Association hereby further designates and appoints Central Agency as its agent to handle for it and on its behalf "yo or all milk or milk products which it may lawfully handle under said act."

2. It shall be the policy and practice of the Central Agency at all times to provide market preferences for milk and cream originating in the natural New England Milk Shed, when and so long as supplies of milk and cream sufficient to fill New England Milk Shed market requirements are produced and available within New England Milk Shed producing area.

- 3. The Member Association hereby agrees that the Central Agency shall be empowered to deduct from the proceeds of the sale of all milk or milk products, or to assess the membership according to volume handled, such sums as are necessary to cover the operating expenses of said Central Agency, and to make such other deductions or assessments as are necessary to care for such other expenditures, including expenditures for the acquitision of property, as the Board of Directors of Central Agency by a majority vote of each of its two groups of Directors shall specifically The Board of Directors of Central Agency shall have the right to establish one rate to be applicable on product delivered to Member Association by producer members of Member Association as fluid milk, and a lower rate to be applicable on product delivered as cream. said deductions or assessments, however, shall not exceed 10¢ per cwt. of milk or milk equivalent.
- 4. The Central Agency will forthwith adopt and inaugurate a plan for the equalization of sales of all milk and cream and the proration of receipts therefor among Member Associations with adjustments for differences in grade, quality, location, quantity, and variation in amount of product handled. The Member Association agrees that the milk or other dairy products shall be produced, kept and delivered under sanitary conditions and in conformity with the laws of the States and requirements of the Boards of Health where such products are produced and marketed. The Central Agency shall have the right to reject any milk or other dairy products not conforming to its standards and to establish such equitable differentials for quality as its Board of Directors may from time to time determine. The policy of said Central Agency will be to sell and make contracts to sell all milk offered for sale through it as whole milk at a class price to be governed by the quality and hutterfat content of such milk.
- 5. The said Central Agency agrees with the Member Association to sell and dispose of and to collect for all of the said milk and cream and to remit the proceeds thereof

ratably direct to the producer member consigning it, or at the option of the Member Association of which the producer consignor is a member, to the said Member Association; or at said Member Association's option said Central Agency shall return to the purchaser of said milk and cream the proper proportion of said proceeds to be paid by the said purchaser direct to producer. Such proceeds shall be remitted as herein provided after deducting the charges of the Member Association and the Central Agency for dues or other deductions. Central Agency agrees to remit to Member Association the dues or other deductions accruing to said Member Association on or before the 30th day of the month next succeeding the month when said milk and cream have been delivered.

6. If a Member Association desires to use a portion or all the milk or milk products controlled by said Member Association or to purchase other so-called surplus milk, the Central Agency shall sell such milk or milk products or surplus milk to said Member Association on the same terms and at the same class prices at which it sells such milk, milk products and surplus milk to other buyers with proper adjustments for transportation costs. Said Member Association so purchasing said milk, milk porducts or surplus milk from the Central Agency shall file with the Central Agency a statement of the utilization of said milk or milk products subject to audit and verification by Central Agency.

7. Prices, terms and conditions under which milk, cream, and surplus milk or the products of surplus milk are to be offered for sale by the Central Agency in each market in which it operates shall be agreed upon and fixed by a committee designated by the Central Agency for that particular market. The committee selected to have jurisdiction of the Greater Boston Market Districts shall consist of three members to be selected by the directors nominated by the New England Milk Producers' Association and three members by the directors nominated by other Member Associations. The committee selected for each of the

markets outside the Greater I ton Market District shall be selected in such manner as the Board of Directors of Central Agency shall designate. Decision as to price, terms and conditions of sale shall be concurred in by a majority of each group of committee members. Committees designated to operate in markets outside the Greater Boston Market District shall be subject to supervision of the Executive Committee of the Central Agency.

8. An operating allowance of not less than 231/4 cents per hundredweight on all products shipped as fluid milk plus adjustments for use of cans, icing and any processing or manufacturing operations other than cooling which the Central Agency may require, shall be made.

9. Wherever possible, the Central Agency, with the consent of a Member Association and in co-operation with said Member Association, shall bring about savings in freight charges and overhead expenses.

10. The Central Agency shall not interfere with the management, producer contracts, or financial organization of any Member Association.

11. Nothing herein contained shall be construed as affecting the corporate existence, organization or the exercise of the corporate powers of any Member Association party hereto, and nothing herein contained shall be construed as affecting the contracts between a Member Association party hereto and its respective members.

12. Central Agency shall require bond with sufficient surety for the faithful performance of their respective official duties of all officers and employees handling or having authority to handle the property or money of the Central Agency or a Member Association, or to execute notes in its name or draw checks on its bank accounts. The Central Agency agrees to keep true and correst books of account showing clearly and accurately all of the sales and purchases, all of its expenses, all of its receipts and expenditures, all of its debts, all of its assets, and all other of its records, all in detail, and directors of said Central Agency and/or duly authorized representatives of Member Associations or their accountants shall at all reasonable times

the state of the s

have free access to all of said books and accounts, and all invoices, bills of lading, checks, drafts and their support-

ing papers, vouchers, and memoranda.

13. Inasmuch as this contract is one of a series similar in terms and depending for its true value upon the compliance with its terms by each of its Member Associations, and inasmuch as it is impracticable and extremely difficult to determine the actual damage resulting to the Central Agency should the Member Association fail to deliver its milk and cream in accordance with the terms hereof, the Member Association hereby agrees to pay the Central Agency for all milk and cream delivered or disposed of, by or for it, other than in accordance with the terms hereof, a sum equal to fifty cents per hundredweight of milk or its equivalent as liquidated damages for the breach of this contract, but the cancellation of this contract, or the failure of the Member Association to comply therewith, shall not affect other similar contracts.

14. It is agreed that this contract shall continue in full force and effect for a period of three years from the date when said contract is declared operative and continuously thereafter subject to any limitation imposed by law and may be cancelled by either party by notice in writing to the other between the First and Fifteenth days of December 1936 or any year thereafter and such cancellation shall become effective on the following first day of March, provided however, that if at the date of the notice of cancellation there is outstanding any indebtedness of Central Agency then this contract shall not be cancelled, but shall continue in full force and effect until such time as Member Association shall have paid its fair share of the indebtedness which was outstanding and unpaid on the date of the receipt of the notice of cancellation.

15. Any of the terms, conditions and provisions contained in this agreement may be eliminated, altered or added to by mutual agreement between Central Agency and all Member Associations which are then parties to a contract with Central Agency substantially similar to this contract.

- 16. It is hereby declared to be the policy of the Central Agency in so far as it may be lawful so to do, to enter into contract with dealers within the New England Milk Shed markets to supply such dealers with their full requirements of milk and cream.
- 17. The Member Association hereby covenants and agrees that it will forthwith submit and solicit signatures to a commodity contract between itself, Central Agency, and producer member substantially in the form hereto annexed and marked Exhibit 'A', provided, however, that where Member Association now has commodity contracts between itself and its producer members substantially in the form hereto annexed and marked Exhibit, 'B' it will forthwith submit to its said producer members and solicit signatures to an amendment to said commodity contracts substantially in the form hereto annexed and marked Exhibit 'C', and in so far as such Member Association may solicit and secure new producer members such new producer members shall be required to sign commodity contracts with such Member Association substantially in the form of Exhibit 'A' hereto attached.

In event all producer members of Member Association have not signed such contracts prior to April 1, 1934, Central Agency shall be authorized and may solicit signatures to such contracts.

In Testimony Whereof the said Member Association and the said Central Agency have caused this contract to be signed in their corporate names by their corporate presidents thereunto duly authorized and their corporate seals to be hereunto annexed the day and year first above written.

New England Dairies, Inc. By E. H. Bancroft

President

New England Milk Producers Association
By George R. Little

President

Wendell P. Davis Clerk

EXHIBIT 4.

New England Milk Producers' Association Membership Agreement

Whereas, New England Milk Producers' Association, hereinafter called NEMPA, is an Association of producers of dairy products duly organized under the laws of the Commonwealth of Massachusetts and having its usual place of business in Boston, for the purpose of minimizing speculation and waste in the marketing of dairy products, and for the further purpose of performing services for producers of dairy products in connection with the production, marketing, selling, manufacture, and other utilization of milk and milk products; and whereas the undersigned is a producer of dairy products and desires to avail himself of the services of NEMPA for the marketing or other distribution thereof:

Therefore, in consideration of the mutual covenants herein contained, it is hereby agreed between said NEMPA on the one hand, and the producer, hereinafter called Member, on the other hand as follows:

- 1. Member by the execution of this agreement by the parties hereto becomes a member of NEMPA and agrees to be bound by the by-laws, rules and regulations of said. NEMPA as the same may from time to time be in effect.
 - 2. Member hereby appoints NEMPA as the sole and exclusive agent to sell or otherwise market all milk or cream owned and/or controlled by Member during the life of this agreement, except such as is retained for consumption on the premises where produced, hereby granting to NEMPA full power and authority to sell such milk and cream in its own name to such parties and at such prices, terms and conditions as NEMPA shall consider to be to the best advantage of Member. The Member agrees that said milk or cream shall be delivered at such plants, shipping stations, or other places as NEMPA shall from time to time direct, it being agreed that said milk or cream shall be produced, kept and delivered under sanitary conditions in conformity

with NEMPA requirements and the laws and Board of Health rules and regulations of the state and locality where such milk is produced and marketed; the Member hereby grants to NEMPA full power and authority to collect in its own name all monies due or to become due to the Member for milk or milk products sold or to be sold by NEMPA. NEMPA may, at its own election, authorize the dealer to whom said milk and milk products are sold to remit in whole or in part directly to Member. A copy of this agreement certified to by Clerk or other Authorized Agent of NEMPA shall constitute authority to the dealer to pay for products sold to said dealer as NEMPA may from time to time direct.

3. NEMPA hereby agrees that it will sell said milk or cream to such parties and at such prices, terms and conditions as it considers to be for the best advantage of Member and agrees that it will pay Member the proceeds received from the sale of said milk or cream, less costs of handling, operations, supervision, New England Dairyman, for which Member hereby subscribes, and other costs and expenses of conducting the business and operations of NEMPA as determined by its Board of Directors, including such amounts as may be set aside as reserves. NEMPA shall have the right to establish differentials with respect to grades, quality, distance, and variations in production. NEMPA shall-establish the greater Boston market district and such other market districts as it may deem necessary or advisable. With the consent of the Sales Committee of the market district where Member's milk is sold, NEMPA shall have the right to blend proceeds received from sales for the Member with proceeds received from sales for other members in the same district, and to distribute such blended proceeds, less charges as above specified, to Member and other members in the same market district by a uniform method applicable to all said members; grade, distance, quality, quantity, and variation in production considered.

- 4. With the consent of the Sales Committee of each market district, NEMPA shall have the right to blend the proceeds received from sales for Member with proceeds from sales for other members in other market districts and distribute such blended proceeds, less charges as above specified, to Member and all other members in each market district by a uniform method applicable to all said members; grade, distance, quality, quantity, and variation in production considered.
- 5. Property ownership under certain conditions. For the purpose of creating special funds to be used to build or otherwise acquire such plants and equipment, and to provide such working capital as NEMPA may deem necessary, NEMPA may, upon authorization of the Central Association at a regular or special meeting, due notice of this purpose having been included in the call for such meeting, withhold from the amounts due Member hereunder such sums as NEMPA may deem necessary or advisable for such purposes. After the close of each fiscal year, each Member shall receive a certificate in such form and on such terms and conditions as the Board of Directors of NEMPA may from time to time determine evidencing monies contributed that year to said special funds.
 - 6. Inasmuch as the remedy at law would be inadequate and inasmuch as it is impracticable and extremely difficult to determine the actual damage resulting to NEMPA should the Member fail to deliver milk and cream in accordance with the terms hereof, regardless of the cause of such failure, Member hereby agrees to pay to NEMPA for all milk and cream delivered or disposed of, by or for him, other than in accordance with the terms hereof, the sum of Fifty (50) cents per hundredweight of milk or its equivalent as liquidated damages for the breach of this agreement; all parties agreeing that this agreement is one of a series dependent for its true value upon the adherence of . each and all of the contracting parties to each and all of the said agreements, but the cancellation of this agreement or the failure of Member to comply therewith shall not affect other similar agreements.

Member Dealer

7. This agreement shall be continuous in its operation unless cancelled and terminated on the 1st day of April in any calendar year upon written notice of intention to so cancel given by either party to the other between the 1st and 15th day of February next preceding.

8. This agreement shall supersede and terminate all contracts, agreements, or arrangements, heretofore made by Member with respect to the sale of his milk or cream, subject however, to existing contracts with other parties which Member hereby agrees not to renew and to terminate at the earliest possible date.

IN WITNESS WHEREOF, parties hereto have executed this agreement this day of 193

NEW ENGLAND MILK PRODUCERS' ASSOCIATION

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EXHIBIT 4a.

NEW ENGLAND MILK PRODUCERS' ASSOCIATION NEW ENGLAND DAIRIES, INC.

Membership Agreement

WHEREAS, New England Milk Producers' Association, hereinafter called NEMPA, is an Association of producers of dairy products duly organized under the laws of the Commonwealth of Massachusetts and having its usual place of

business in Boston in said Commonwealth, and

WHEREAS, New England Dairies, Inc. hereinafter called Central Agency, is a cooperative Association duly organized under the Cooperative Marketing Act of the State of Vermont, having its principal place of business in Barre in said State, both of said Corporations having been organized for the purpose of minimizing speculation and waste in the marketing of dairy products and for the further purpose of performing services for producers of dairy products in connection with the production, marketing, selling, manufacture and other utilization of milk and milk products, and

WHEREAS, the undersigned is a producer of dairy products. and desires to avail himself of the services of the said Associations for the marketing or other utilization thereof:

Therefore, in consideration of the mutual covenants herein contained, it is hereby agreed between said NEMPA on the one hand; and the producer, hereinafter called Member, on the other hand as follows:

1. Member by the execution of this agreement by the parties hereto becomes a member of NEMPA and agrees to be bound by the by-laws, rules and regulations of said NEMPA as the same may from time to time be in effect.

2. Member hereby appoints NEMPA as the sole and exclusive agent to sell or otherwise market all milk or cream owned and/or controlled by Member during the period of this agreement except such as is retained for consumption on the premises where produced or is released by the NEMPA. Member grants to NEMPA full power and authority to sell such milk and cream in its own name to such parties and at such prices, terms and conditions as NEMPA shall consider to be to the best advantage of Member.

3. The Member agrees that said milk or cream shall be delivered at such plants, shipping stations, or other places as NEMPA shall from time to time direct, it being agreed that said milk or cream shall be produced, kept and delivered under sanitary conditions in conformity with NEMPA

requirements and the laws and Board of Health rules and regulations of the state and locality where such milk is produced and marketed.

- 4. The Member hereby grants to NEMPA full power and authority to collect in its name all monies due or to become due to the Member for milk or milk products sold or to be sold by NEMPA. NEMPA may, at its own election, authorize the dealer to whom said milk or milk products are sold to remit in whole or in part directly to Member. A copy of this agreement certified to by the Clerk or other authorized agent of NEMPA shall constitute authority to the dealer to pay for products sold to said dealer as NEMPA may from time to time direct.
- 5. NEMPA agrees that it will sell said milk or cream, together with the milk or cream of other members, to such parties and at such prices, terms and conditions as it considers to be for the best advantage of the Member and agrees that it will pay Member the proceeds received from the sale of said milk or cream ratably, less costs of handling. operations, supervision, "New England Dairyman", for which Member hereby subscribes, and other costs and expenses of conducting the business and operations of NEMPA as determined by its Board of Directors, including such amounts as may be set aside as reserves. The Board of Directors of NEMPA shall have the right to establish equitable differentials with respect to grades, quality, quantity, location and variation in amount of product delivered. NEMPA shall establish the greater Boston market district and such other market districts as it may deem necessary or advisable. With the consent of the Sales Committee of the market district where Member's milk is sold, NEMPA shall have the right to blend proceeds received from sales for the Member with proceeds received from sales for other members in the same district, and to distribute such blended proceeds, less charges as above specified, to Member and other members in the same market district by a uniform. method, applicable to all said members; grades, location, quality, quantity, and variation in amount of product delivered, considered.

6. With the consent of the Sales Committee of each market district, NEMPA shall have the right to blend the proceeds received from sales for Member with proceeds from sales for other members in other market districts and distribute such blended proceeds, less charges as above specified, to Member and all other members in each market district by a uniform method applicable to all said members; grades, location, quality, quantity, and variation in amount

of product delivered, considered.

7. Property ownership under certain conditions. For the purpose of creating special funds to be used to build or otherwise acquire such plants and equipment, and to provide such working capital as NEMPA may deem necessary, NEMPA may, upon authorization of the Central Association at a regular or Special meeting, due notice of this purpose having been included in the call for such meeting, withhold from the amounts due Member hereunder such sums as NEMPA may deem necessary or advisable for such purposes. After the close of each fiscal year, each Member shall receive a certificate in such form and on such terms and conditions as the Board of Directors of NEMPA may from time to time determine evidencing monies contributed that year to said special funds.

8. NEMPA agrees that it will market the Member's milk or milk products to or through the Central Agency so long as NEMPA is a member of Central Agency and Central Agency operates as a marketing agency for dairy products; and the Member hereby specifically authorizes the NEMPA to withhold from the amounts otherwise due the Member such amounts as may be necessary to pay to Central Agency member's proportion of the share of NEMPA in said Central Agency's obligations including amounts necessary for

the purchase and/or liquidation of properties.

9. So long as NEMPA is obligated under the terms of this contract to market the Member's milk, the rights and obligations of the Member to the NEMPA relative to the Member's financial interest in NEMPA shall be as provided in the by-laws of NEMPA.

10. It is agreed by Member, NEMPA and Central Agency that upon the fulfillment of the conditions bereinafter set forth in this paragraph; the obligation of the Member to market his dairy products as NEMPA shall direct, shall cease; and thereupon Member's obligations created under this contract shall run to Central Agency, and the obligation to market such dairy products by NEMPA shall cease and thereupon Central Agency shall assume such obligations; the conditions hereinbefore referred to being—

a. That in the judgment of the Board of Directors of Central Agency a sufficient proportion of the milk supply of Greater Boston and the principal lesser markets, outside of Connecticut and Rhode Island, is consolidated and in effect controlled by Central Agency to an extent that will

make successful operation probable.

b. That the value of the NEMPA's property has been determined in accordance with the method set forth in section 9 of the contract between NEMPA and Central Agency, and Central Agency has made due provision for the purchase or other acquisition of the property of the NEMPA in accordance with the contract between NEMPA and Central Agency.

c. Central Agency has revised its articles of incorporation and by-laws to provide for the equitable interest of Member in Central Agency's assets and to provide for equitable representation of Member in the control and operation

of Central Agency.

11. Member expressly agrees that in the event this agreement becomes effective between Central Agency and the Member in accordance with the terms and conditions hereinbefore set forth, Central Agency may for the purpose of creating special funds for the purpose of building or otherwise acquiring such plants and equipment and providing such working capital as Central Agency may deem necessary withhold from the amounts otherwise due Member hereunder such sums not exceeding ten cents per hundredweight of milk or milk equivalent and for such periods as Central Agency may deem necessary or advisable for such

purposes. The Board of Directors of Central Agency shall have the right to establish one rate of contribution to be applicable on product delivered by Member as fluid milk and a lower rate of contribution to be applicable on product delivered as cream. After the close of each fiscal year, each Member shall receive a certificate in such form and on such terms and conditions as the Board of Directors of Central Agency may from time to time determine evidencing monies contributed that year to said special funds.

12. Inasmuch as the remedy at law would be inadequate and inasmuch as it is impracticable and extremely difficult to determine the actual damage resulting to NEMPA or Central Agency, should the Member fail to deliver milk and cream in accordance with the terms hereof, regardless of the cause of such failure, Member hereby agrees to pay to NEMPA or Central Agency for all milk and cream delivered or disposed of by or for him, other than in accordance with the terms hereof, the sum of fifty (50) cents per hundredweight of milk or its equivalent as liquidated damages for the breach of this agreement; all parties agreeing that this agreement is one of a series dependent for its true value upon the adherence of each and all of the contracting parties to each and all of the said agreements, but the cancellation of this agreement or the failure of Member to comply therewith shall not affect other similar agreements.

13. This agreement shall be continuous in its operation subject to any limitations imposed by law unless cancelled and terminated on the 1st day of March in any calendar year upon written notice of intention to so cancel given by either party to the other between the 1st and 15th day of December next preceding.

14. This agreement shall supersede and terminate all contracts, agreements, or arrangements, heretofore made by Member with respect to the sale of his milk or cream, subject, however, to existing contracts with other parties which Member hereby agrees not to renew and to terminate at the earliest possible date.

Exhibits

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EXHIBIT 4b.

NEW ENGLAND MILK PRODUCERS' ASSOCIATION CONSOLIDATED DAIRIES, INC. Membership Agreement '

WHEREAS, New England Milk Producers' Association, hereinafter called NEMPA, is an Association of producers of dairy products duly organized under the laws of the Commonwealth of Massachusetts and having its usual place of business in Boston in said Commonwealth, and

WHEREAS, Consolidated Dairies, Inc. hereinafter called Central Agency, is a cooperative Association duly organized under the Cooperative Marketing Act of the State of Vermont, having its principal place of business in Barre in said

State, both of said Corporations having been organized for the purpose of minimizing speculation and waste in the marketing of dairy products and for the further purpose of performing services for producers of dairy products in connection with the production, marketing, selling, manufacture and other utilization of milk and milk products, and

Whereas, the undersigned is a producer of dairy products and desires to avail himself of the services of the said Associations for the marketing or other utilization thereof:

Therefore, in consideration of the mutual covenants herein contained, it is hereby agreed between said NEMPA on the one hand, and the producer, hereinafter called Member, on the other hand as follows:

1. Member by the execution of this agreement by the parties hereto becomes a member of NEMPA and agrees to be bound by the by-laws, rules and regulations of said NEMPA as the same may from time to time be in effect.

2. Member hereby appoints NEMPA as the sole and exclusive agent to sell or otherwise market all milk or cream owned and/or controlled by Member during the period of this agreement except such as is retained for consumption on the premises where produced or is released by the NEMPA. Member grants to NEMPA full power and authority to sell such milk and cream in its own name to such parties and at such prices, terms and conditions as NEMPA shall consider to be to the best advantage of Member.

3. The Member agrees that said milk or cream shall be delivered at such plants, shipping stations, or other places as NEMPA shall from time to time direct, it being agreed that said milk or cream shall be produced, kept and delivered under sanitary conditions in conformity with NEMPA requirements and the laws and Board of Health rules and regulations of the state and locality where such milk is produced and marketed.

4. The member hereby grants to NEMPA full power and authority to collect in its name all monies due or to become due to the Member for milk or milk products sold or to be sold by NEMPA. NEMPA may, at its own election, author-

ize the dealer to whom said milk or milk products are sold to remit in whole or in part directly to Member. A copy of this agreement certified to by the Clerk or other authorized agent of NEMPA shall constitute authority to the dealer to pay for products sold to said dealer as NEMPA may from time to time direct.

- 5. NEMPA agrees that it will sell said milk or cream, together with the milk or cream of other members, to such parties and at such prices, terms and conditions as it considers to be for the best advantage of the Member and agrees that it will pay Member the proceeds received from the sale of said milk or cream ratably, less costs of handling, operations, supervision, "New England Dairyman", for which Member hereby subscribes, and other costs and expenses of conducting the business and operations of NEMPA as determined by its Board of Directors, including such amounts as may be set aside as reserves. The Board of Directors of NEMPA shall have the right to establish equitable differentials with respect to grades, quality, quantity, location and variation in amount of product delivered. NEMPA shall establish the greater Boston market district and such other market districts as it may deem necessary or advisable. With the consent of the Sales Committee of the market district where Member's milk is sold, NEMPA shall have the right to blend proceeds received from sales for the Member with proceeds received from sales for other members in the same district, and to distribute such blended proceeds, less charges as above specified, to Member and other members in the same market district by a uniform method applicable to all said members; grades, quality, quantity, location, and variation in amount of product delivered, considered.
- 6. With the consent of the Sales Committee of each market district, NEMPA shall have the right to blend the proceeds received from sales for Member with proceeds from sales for other members in other market districts and distribute such blended proceeds, less charges as above specified, to Member and all other members in each market

district by a uniform method applicable to all said members; grades, quality, quantity, location, and variation in amount

of product delivered, considered.

7. Property ownership under certain conditions. For the purpose of creating special funds to be used to build or otherwise acquire such plants and equipment, and to provide such working capital as NEMPA may deem necessary, NEMPA may, upon authorization of the Central Association at a regular or Special meeting, due notice of this purpose having been included in the call for such meeting, withhold from the amounts due Member hereunder such sums as NEMPA may deem necessary or advisable for such purposes. After the close of each fiscal year, each Member shall receive a certificate in such form and on such terms and conditions as the Board of Directors of NEMPA may from time to time determine evidencing monies contributed that year to said special funds.

8. NEMPA agrees that it will market the Member's milk or milk products to or through the Central Agency, or such other agency as it may designate to act for it, so long as NEMPA is a member of Central Agency and Central Agency operates as a marketing agency for dairy products; and the Member hereby specifically authorizes the NEMPA to withhold from the amounts otherwise due the Member such amounts as may be necessary to pay to Central Agency member's proportion of the share of NEMPA in said Central Agency's obligations including amounts necessary for the purchase and/or liquidation of properties; and NEMPA is hereby expressly authorized to empower Central Agency to perform the marketing services through such agency or

instrumentality as Central Agency may determine.

9. Inasmuch as the remedy at law would be inadequate and inasmuch as it is impracticable and extremely difficult to determine the actual damage resulting to NEMPA, should the Member fail to deliver milk and cream in accordance with the terms hereof, regardless of the cause of such failure, Member hereby agrees to pay to NEMPA for all milk and cream delivered or disposed of by or for him, other than

in accordance with the terms hereof, the sum of fifty (50) cents per hundredweight of milk or its equivalent as liquidated damages for the breach of this agreement; all parties agreeing that this agreement is one of a series dependent for its true value upon the adherence of each and all of the contracting parties to each and all of the said agreements. but the cancellation of this agreement or the failure of Member to comply therewith shall not affect other similar agreements.

- 10. This agreement shall be continuous in its operation subject to any limitations imposed by law unless cancelled and terminated on the 1st day of March in any calendar year upon written notice of intention to so cancel given by either party to the other between the 1st and 15th day of December next preceding.
- 11. This agreement shall supersede and terminate all contracts, agreements, or arrangements, heretofore made by Member with respect to the sale of his milk or cream, subject however, to existing contracts with other parties which Member hereby agrees not to renew and to terminate at the earliest possible date.

IN WITNESS WHEREOF, parties hereto have executed this agreement this day of

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EXHIBIT 4c.

New England Milk Producers' Association
Consolidated Dairies, Inc.

Membership Agreement

Whereas, New England Milk Producers' Association, hereinafter called NEMPA, is an Association of producers of dairy products duly organized under the laws of the Commonwealth of Massachusetts and having its usual place of business in Boston in said Commonwealth, and

Whereas, Consolidated Dairies, Inc. hereinafter called Central Agency, is a cooperative Association duly organized under the Cooperative Marketing Act of the State of Vermont, having its principal place of business in Barre in said State, both of said Corporations having been organized for the purpose of minimizing speculation and waste in the marketing of dairy products and for the further purpose of performing services for producers of dairy products in connection with the production, marketing, selling, manufacture and other utilization of milk and milk products, and

Whereas, the undersigned is a producer of dairy products and desires to avail himself of the services of the said Associations for the marketing or other utilization thereof:

Therefore, in consideration of the mutual covenants herein contained, it is hereby agreed between said NEMPA on the one hand, and the producer, hereinafter called Member, on the other hand as follows:

1. Member by the execution of this agreement by the parties hereto becomes a member of NEMPA and agrees to

be bound by the by-laws, rules and regulations of said NEMPA as the same may from time to time be in effect.

- 2. Member hereby appoints NEMPA as the sole and exclusive agent to sell or otherwise market all milk or cream owned and/or controlled by Member during the period of this agreement except such as is retained for consumption on the premises where produced or is released by the NEMPA. Member grants to NEMPA full power and authority to sell such milk and cream in its own name to such parties and at such prices, terms and conditions as NEMPA shall consider to be to the best advantage of Member.
- 3. The Member agrees that said milk or cream shall be delivered at such plants, shipping stations, or other places as NEMPA shall from time to time direct, it being agreed that said milk or cream shall be produced, kept and delivered under sanitary conditions in conformity with NEMPA requirements and the laws and Board of Health rules and regulations of the state and locality where such milk is produced and marketed.
- 4. The Member hereby grants to NEMPA full power and authority to collect in its name all monies due or to become due to the Member for milk or milk products sold or to be sold by NEMPA. NEMPA may, at its own election, authorize the dealer to whom said milk or milk products are sold to remit in whole or in part directly to Member. A copy of this agreement certified to by the Clerk or other authorized agent of NEMPA shall constitute authority to the dealer to pay for products sold to said dealer as NEMPA may from time to time direct.
- 5. NEMPA agrees that it will sell said milk or cream, together with the milk or cream of other members, to such parties and at such prices, terms and conditions as it considers to be for the best advantage of the Member and agrees that it will pay Member the proceeds received from the sale of said milk or cream ratably, less costs of handling, operations, supervision, "New England Dairyman", for which Member hereby subscribes, and other costs and expenses of conducting the business and operations of

NEMPA as determined by its Board of Directors, including such amounts as may be set aside as reserves. The Board of Directors of NEMPA shall have the right to establish equitable differentials with respect to grades, quality, quantity, location and variation in amount of product delivered. NEMPA shall establish the greater Boston market district and such other market districts as it may deem necessary or advisable. With the consent of the Sales Committee of the market district where Member's milk is sold, NEMPA shall have the right to blend proceeds received from sales for the Member with proceeds received from sales for other members in the same district, and to distribute such blended proceeds, less charges as above specified, to Member and other members in the same market district by a uniform method applicable to all said members; grades, location, quality, quantity, and variation in amount of product delivered, considered.

6. With the consent of the Sales Committee of each market district, NEMPA shall have the right to blend the proceeds received from sales for Member with proceeds from sales for other members in other market districts and distribute such blended proceeds, less charges as above specified, to Member and all other members in each market district by a uniform method applicable to all said members; grades, location, quality, quantity, and variation in amount

of product delivered, considered.

7. Property ownership under certain conditions. For the purpose of creating special funds to be used to build or otherwise acquire such plants and equipment, and to provide such working capital as NEMPA may deem necessary, NEMPA may, upon authorization of the Central Association at a regular or Special meeting, due notice of this purpose having been included in the call for such meeting, withhold from the amounts due Member hereunder such sums as NEMPA may deem necessary or advisable for such purposes. After the close of each fiscal year, each Member shall receive a certificate in such form and on such terms and conditions as the Board of Directors of NEMPA may

from time to time determine evidencing monies contributed that year to said special funds.

8. NEMPA agrees that it will market the Member's milk or milk products to or through the Central Agency so long as NEMPA is a member of Central Agency and Central Agency operates as a marketing agency for dairy products; and the Member hereby specifically authorizes the NEMPA to withhold from the amounts otherwise due the Member such amounts as may be necessary to pay to Central Agency member's proportion of the share of NEMPA in said Central Agency's obligations including amounts necessary for the purchase and/or liquidation of properties; and NEMPA is hereby expressly authorized to empower Central Agency to perform the marketing services through such agency or instrumentality as Central Agency may determine.

9. Inasmuch as the remedy at law would be inadequate and inasmuch as it is impracticable and extremely difficult to determine the actual damage resulting to NEMPA, should the Member fail to deliver milk and cream in accordance with the terms hereof, regardless of the cause of such failure, Member hereby agrees to pay to NEMPA for all milk and cream delivered or disposed of by or for him, other than in accordance with the terms hereof, the sum of fifty (50) cents per hundredweight of milk or its equivalent as liquidated damages for the breach of this agreement; all parties agreeing that this agreement is one of a series dependent for its true value upon the adherence of each and all of the contracting parties to each and all of the said agreements, but the cancellation of this agreement or the failure of Member to comply therewith shall not affect other similar agreements.

10. This agreement shall be continuous in its operation subject to any limitations imposed by law unless cancelled and terminated on the 1st day of March in any calendar year upon written notice of intention to so cancel given by either party to the other between the 1st and 15th day of December next preceding; provided, however, that if at any time prior to the date hereinbefore stated for cancellation of this con-

tract, Consolidated Dairies, Inc., or such other agency as it may designate to act for it, shall for any cause cease to function as a Central Marketing Agency, then this contract shall be null and void.

11. This agreement shall supersede and terminate all contracts, agreements, or arrangements, heretofore made by Member with respect to the sale of his milk or cream, subject however, to existing contracts with other parties which Member hereby agrees not to renew and to terminate at the earliest possible date.

In WITNESS WHEREOF, parties hereto have executed this agreement this day of 193 NEW ENGLAND MILK PRODUCERS' ASSOCIATION ByPresident CONSOLIDATED DAIRIES, INC. ByPresident Shipping Station Member Address N.E.M.P.A - CONSOLIDATED Canvasser Please Print Plainly Name Producer:-......... His P. O. Address:-************* Local Producer Delivering To: Dealer

EXHIBIT 4d.

NEW ENGLAND MILK PRODUCERS' ASSOCIATION
NEW ENGLAND DAIRIES, INC.

Membership Agreement

Whereas, New England Milk Producers' Association, hereinafter called NEMPA, is an Association of producers of dairy products duly organized under the laws of the Commonwealth of Massachusetts and having its usual place of business in Boston in said Commonwealth, and

Whereas, New England Dairies, Inc. hereinafter called Central Agency, is a cooperative Association duly organized under the Cooperative Marketing Act of the State of Vermont, having its principal place of business in Barre in said State, both of said Corporations having been organized for the purpose of minimizing speculation and waste in the marketing of dairy products and for the further purpose of performing services for producers of dairy products in connection with the production, marketing, selling, manufacture and other utilization of milk and milk products, and

Whereas, the undersigned is a producer of dairy products and desires to avail himself of the services of the said Associations for the marketing or other utilization thereof:

Therefore, in consideration of the mutual covenants herein contained, it is hereby agreed between said NEMPA on the one hand, and the producer, hereinafter called Member, on the other hand as follows:

1. Member by the execution of this agreement by the parties hereto becomes a member of NEMPA and agrees to be bound by the by-laws, rules and regulations of said NEMPA as the same may from time to time be in effect.

2. Member hereby appoints NEMPA as the sole and exclusive agent to sell or otherwise market all milk or cream owned and/or controlled by Member during the period of this agreement except such as is retained for consumption on the premises where produced or is released by the NEMPA. Member grants to NEMPA full power and authority to sell such milk and cream in its own name to such

parties and at such prices, terms and conditions as NEMPA shall consider to be to the best advantage of Member.

3. The Member agrees that said milk or cream shall be delivered at such plants, shipping stations, or other places as NEMPA shall from time to time direct, it being agreed that said milk or cream shall be produced, kept and deliv-; ered under sanitary conditions in conformity with NEMPA requirements and the laws and Board of Health rules and regulations of the state and locality where such milk is produced and marketed.

4. The Member hereby grants to NEMPA full power and authority to collect in its name all monies due or to become due to the Member for milk or milk products sold or to be sold by NEMPA. NEMPA may, at its own election, authorize the dealer to whom said milk or milk products are sold to remit in whole or in part directly to Member. A copy of this agreement certified to by the Clerk or other authorized agent of NEMPA shall constitute authority to the dealer to pay for products sold to said dealer as NEMPA may

from time to time direct.

5. NEMPA agrees that it will sell said milk or cream, together with the milk or cream of other members, to such parties and at such prices, terms and conditions as it considers to be for the best advantage of the Member and agrees that it will pay Member the proceeds received from the sale of said milk or cream ratably, less costs of handling, operations, supervision, "New England Dairyman", for which Member hereby subscribes, and other costs and expenses of conducting the business and operations of NEMPA as determined by its Board of Directors, including such amounts as may be set aside as reserves. The Board of Directors of NEMPA shall have the right to establish equitable differentials with respect to grades, quality, quantity, location and variation in amount of product delivered. NEMPA shall establish the greater Boston market district and such other market districts as it may deem necessary or advisable. With the consent of the Sales Committee of the market district where Member's milk is sold, NEMPA shall have the right to blend proceeds received from sales for the Member with proceeds received from sales for other members in the same district, and to distribute such blended proceeds, less charges as above specified, to Member and other members in the same market district by a uniform method applicable to all said members; grades, quality, quantity, location, and variation in amount of product delivered, considered.

6. With the consent of the Sales Committee of each market district, NEMPA shall have the right to blend the proceeds received from sales for Member with proceeds from sales for other members in other market districts and distribute such blended proceeds, less charges as above specified, to Member and all other members in each market district by a uniform method applicable to all said members; grades, quality, quantity, location, and variation in amount of product delivered, considered.

7. Property ownership under certain conditions. For the purpose of creating special funds to be used to build or otherwise acquire such plants and equipment, and to provide such working capital as NEMPA may deem necessary. NEMPA may, upon authorization of the Central Association at a regular or Special meeting, due notice of this purpose having been included in the call for such meeting, withhold from the amounts due Member hereunder such sums as NEMPA may deem necessary or advisable for such purposes. After the close of each fiscal year, each Member shall receive a certificate in such form and on such terms and conditions as the Board of Directors of NEMPA may from time to time determine evidencing monies contributed that year to said special funds.

8. NEMPA agrees that it will market the Member's milk or milk products to or through the Central Agency, or such other agency as it may designate to act for it, so long as NEMPA is a member of Central Agency and Central Agency operates as a marketing agency for dairy products; and the Member hereby specifically authorizes the NEMPA to

withhold from the amounts otherwise due the Member such amounts as may be necessary to pay to Central Agency member's proportion of the share of NEMPA in said Central Agency's obligations including amounts necessary for the purchase and/or liquidation of properties; and NEMPA is hereby expressly authorized to empower Central Agency to perform the marketing services through such agency or instrumentality as Central Agency may determine.

9. Inasmuch as the remedy at law would be inadequate and inasmuch as it is impracticable and extremely difficult to determine the actual damage resulting to NEMPA, should the Member fail to deliver milk and cream in accordance with the terms hereof, regardless of the cause of such failure, Member hereby agrees to pay to NEMPA for all milk and cream delivered or disposed of by or for him, other than in accordance with the terms hereof, the sum of fifty (50) cents per hundredweight of milk or its equivalent as liquidated damages for the breach of this agreement; all parties agreeing that this agreement is one of a series dependent for its true value upon the adherence of each and all of the contracting parties to each and all of the said agreements, but the cancellation of this agreement or the failure of Member to comply therewith shall not affect other similar agreements.

10. This agreément shall be continuous in its operation subject to any limitations imposed by law unless cancelled and terminated on the 1st day of March in any calendar year upon written notice of intention to so cancel given by either party to the other between the 1st and 15th day of December next preceding.

11. This agreement shall supersede and terminate all contracts, agreements, or arrangements, heretofore made by Member with respect to the sale of his milk or cream, subject however, to existing contracts with other parties which Member hereby agrees not to renew and to terminate at the earliest possible date.

Exhibits

	WHEREOF, parti	es hereto l	ave exec	cuted this
agreement thi	s day of :		193 :	
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	By			President
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	By			
Member	Shipping Stati			
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EXHIBIT 5.

New England Dairies, Inc. Articles of Incorporation As Amended May, 1937

We, the undersigned, being all the incorporators of New England Dairies, Inc., do hereby certify that a meeting for organization of the said association was held at Montpelier. County of Washington, Vermont, on the 27th day of May 1931 by five persons, a majority of whom are residents of Vermont engaged in the production of agricultural products, and we do hereby file the following certificate of organization:

ARTICLE I-NAME

The name of this corporation shall be New England Dairies, Inc.

ARTICLE II-PURPOSES

Section 1. The purpose of this corporation shall be to create and maintain an organization for the marketing of dairy and/or other farm products; to promote and provide for unity of effort by producers of dairy products and their cooperative associations in the handling, processing, and marketing of milk, and/or other dairy and farm products and to do any and all things conducive to carrying out, the general policy of Congress, as stated in the "Agricultural Marketing Act" approved June 15, 1929, (Public #10-71st Congress.)

Sect. 2. This corporation shall enter into contract with its members for the purpose of marketing the farm and dairy products of said members through this organization and its agents, and said contract may provide for the preparation, processing, handling, and marketing of the same.

Sect. 3. This corporation may buy, sell, lease, build, and/or otherwise acquire the necessary property, both real and personal, for the adequate handling, storing, and dispos-

ing of farm and dairy products handled by it.

Sect. 4. This corporation may conduct educational work among its members relative to the preparations, processing, handling, and marketing of farm and dairy products.

Sect. 5. This corporation shall not buy or handle the farm and dairy products of other than members in an amount in excess of the value of the products bought, han-

dled, or sold for its members.

Sect. 6. This corporation may borrow money for any of the purposes contemplated without limitation; and to do so may issue its bonds, mortgages, deeds of trust, debentures, notes and other obligations therefor, and to secure the same may pledge, mortgage, or trust deed on the whole or any part of the property belonging to this corporation.

Sect. 7. This corporation may do any or all things herein set forth to the same extent as natural persons may or can do in any market of the world, as principals, agents, contractors, trustees, or otherwise, alone or in company with others. The objects herein specified, except herein limited, should be in no way restricted by reference to or inference from the terms of any other clause or paragraph of these Articles of Incorporation.

Sect. 8. To do anything and everything which may be permitted to be done by corporations organized under the Cooperative Marketing Law of the State of Vermont as fully and completely as if each of said powers were fully set forth herein.

ARTICLE III-PRINCIPAL PLACE OF BUSINESS

The principal place of business of this corporation in the State of Vermont shall be at Barre, Vermont, and the principal place of business outside of the State of Vermont shall be in the City of Boston, Massachusetts.

ARTICLE IV-PROPERTY RIGHTS OF MEMBERS

This corporation shall be organized without capital stock. The property rights and interest of the members shall be as follows:

After the retirement of all outstanding Certificates of Ownership each member shall be entitled to participate in the assets of the corporation upon a basis determined by the amount of sales of each member through the corporation.

New members may be admitted only by complying with the conditions for membership. Upon admission, new members shall be entitled to share in the property of the corporation in accordance with the rule above stated.

ABTICLE V-VOTING RIGHTS

Individual producer members shall be divided into districts according to the plants at which the milk of such members is delivered. The individual members in each district shall meet annually not less than thirty days prior to the date of the annual meeting of the corporation and

shall select one of their number who shall have one vote at the meetings of the corporation as the representative of all such individual members in his district.

Each association member of the corporation except the New England Milk Producers' Association shall be entitled to one vote and only one vote at all meetings of the corporation. The New England Milk Producers' Association shall be entitled to five votes.

Members of this corporation shall have the right to vote in person or by alternate only, and shall not be entitled to vote by proxy or otherwise.

ARTICLE VI-DIRECTORS

Sect. 1. The Board of Directors shall consist of persons nominated by the members. Each member association except the New England Milk Producers' Association shall be entitled to nominate one director.

The individual producer members in each district shall be entitled to nominate one member resident in said district to serve as a member of the Board of Directors. The New England Milk Producers' Association shall be entitled to nominate five directors.

Such nominee shall at the annual meeting of the members of this corporation be elected as directors. A vacancy in the Board of Directors, either temporary or permanent, shall be filled by electing the nominee selected in the manner hereinbefore provided for the selection of directors. The directors shall hold office until the next annual meeting or until other directors are elected and qualified to take their place.

Sect. 2. The Board of Directors shall annually elect from their own number an executive committee of eight who shall be representative of all classes of members. The executive committee shall have all powers incidental to such a committee and such other powers as the Board of Directors may delegate to it.

New England Dairies, Inc. By-Laws

ABTICLE I-NAME

Name of this corporation shall be known as the New England Dairies, Inc.

ARTICLE II-PURPOSES

The purposes for which this corporation shall be organized are those set forth in the certificate of incorporation.

ARTICLE III-MEMBERSHIP

Section 1. The members of this corporation shall be producers of dairy products and dairy and/or farm cooperative associations situated in or doing business in New England; and such producers of dairy products and cooperative organizations of producers of milk and dairy and/or farm products as may from time to time be admitted to this corporation by a majority of the Board of Directors hereof. Each member cooperative organization shall be organized and operate in accordance with the terms of the Capper-Volstead Act being "An Act to Authorize Association of Producers of Agricultural Products" approved February 18, 1922.

Section 2. Each member of this corporation shall give to this corporation full power and control of the marketing of his or its farm and dairy products.

Section 3. Membership in this corporation shall not interfere with the present or future management, and/or contracts with the producer members, patrons, or financial setup of the individual organizations. Membership in this corporation by any of the present or subsequent members shall not be construed to affect the continuation of the separate corporate existence of the member organizations, of the exercise of their corporate powers, nor affect its individual powers of operation and existence, nor affect the financial set-up of said individual member organizations.

Section 4. Any member under contract with this corporation who is found guilty of violating these by-laws or its contracts shall be liable in liquidated damages the sum equal to fifty cents (50¢) per hundredweight of milk or milk equivalent for any product sold contrary to the by-laws or to its contract; and this corporation may retain any funds or credits in its hands to offset the same or bring any action to recover these said damages.

ARTICLE IV-VOTING PRIVILEGES OF MEMBERS

Individual producer members shall be divided into districts according to the plants at which the milk of such members is delivered. The individual members in each district shall meet annually not less than thirty days prior to the date of the annual meeting of the corporation and shall select one of their number who shall have one vote at the meetings of the corporation as the representative of all such individual members in his district.

Each association member of the corporation except the New England Milk Producers' Association shall be entitled to one vote and only one vote at all meetings of the corporation. The New England Milk Producers' Association shall be entitled to five votes.

Members of this corporation shall have the right to vote in person or by alternate only, and shall not be entitled to vote by proxy or otherwise.

ARTICLE V-MEETINGS

Section 1. The calendar year shall be the fiscal year of the corporation.

Section 2. The annual meeting of this corporation shall be held on the second Tuesday of May of each year at such place in the State of Vermont as the Board of Directors may designate.

Section 3. Special meetings of the members of this corporation may be called by the President or by vote of the Board of Directors, and such call shall be in writing and mailed to each member of said corporation at least seven days before said meeting by prepaid U. S. Mail, and such notice shall give the exact place and time of meeting and the business there to be considered.

Section 4. At all meetings of this corporation a quorum shall consist of a majority of the members present in person or by alternate.

ARTICLE VI-DIBECTORS AND OFFICERS

Section 1. The Board of Directors shall consist of persons nominated by the members. Each member association except the New England Milk Producers' Association shall be entitled to nominate one director.

The individual producer members in each district shall be entitled to nominate one member resident in said district to serve as a member of the Board of Directors. The New England Milk Producers Association shall be entitled to nominate five directors.

Such nominees shall at the annual meeting of the members of this corporation be elected as directors. A vacancy in the Board of Directors, either temporary or permanent, shall be filled by electing the nominee selected in the manner hereinbefore provided for the selection of directors. The directors shall hold office until the next annual meeting or until other directors are elected and qualified to take their place.

Section 2. The Board of Directors shall meet within ten days after the first election of directors or any subsequent annual election and shall elect from its members a President and a Vice President. They shall also elect a Secretary and Treasurer who need not be directors.

Section 3. Any member or officer of this corporation who on hearing before the Board of Directors shall be found guilty of intentionally violating these by-laws by act or failure to act may be suspended from membership. Such actions by said Board of Directors shall require two-thirds vote to find guilty and suspend.

ARTICLE VII-ARBITRATION

In the event of a dispute between members of this corporation, or between a member and this corporation, which cannot be adjusted by the Board of Directors or between said directors, the matter shall be submitted to arbitration in the standard manner, forthwith for determination. The decision of the arbitrators shall be final and conclusive on the parties to said dispute; and said arbitrators shall act forthwith by appointing time, place, and giving notices of hearing on said disputed question and shall conclude said hearing as speedily as may be and shall make their finding and award within tendays from the time of the completion of said hearing, furnishing each party interested with a copy of said finding and award, which award shall be final. And the matter in dispute shall stand in status quo until said award is made.

ARTICLE VIII-DUTIES OF DIRECTORS

Section 1. The Board of Directors shall direct and control the management of the business and the affairs of the corporation and make the necessary rules and regulations, not inconsistent with law or with these by-laws, for the management of the business and the guidance of the officers; employees, agents of the corporation, and shall draw up and execute all contracts with members. It shall fix the compensation of the officers, and in case of absence or disability of any officer of the corporation, or for any other reason deemed sufficient by a majority of the Board, the Board may delegate the powers or duties of such officer to any other officer or to any other director for the time being. The Board of Directors shall be authorized and empowered to designate persons to sign checks and/or other instruments on behalf of the corporation.

Section 2. The Board of Directors shall annually elect from their own number an executive committee of eight who shall be representative of all classes of members. The executive committee shall have all the powers incidental to such a committee and such other powers as the Board of Directors may delegate to it.

Section 3. The Board of Directors in its discretion may require the Secretary, Treasurer, and other officers, employees and agents charged with the custody of the funds or property of the corporation to give bond with a sufficient surety for the faithful performance of their respective official duties.

Section 4. The Board shall meet at times and places determined by the Board.

ARTICLE IX-DUTIES OF OFFICERS

Section 1. The President shall:

- (a) Preside over all meetings of the corporation and of the Board of Directors.
- (b) Call special meetings of the corporation and of the Board of Directors and perform all acts and duties usually required of an executive and presiding officer.

(c) Call a meeting of this corporation when three or more member representatives petition him so to do, to hear and act upon any matter contained in said petition.

Section 2. In the absence or disability of the President, the Vice-President shall preside and perform the duties of the President.

Section 3. The Secretary shall:

(a) Keep a complete record of all meetings of the corporation and of the Board of Directors.

(b) Serve all notices required by law and by these by-

(c) Perform such other further duties as may be required of him by the Board of Directors.

(d) Perform all acts usually performed by clerks of corporations.

Section 4. The Treasurer shall:

(a) Sign, as treasurer, checks, notes, deeds, and other instruments on behalf of this corporation.

(b) Receive and disburse all funds and be the custodian

of all the property of this corporation.

(c) Keep a complete record of all business of the corporation and make a full report of all matters and business pertaining to his office to the members at their annual meeting and make all reports required by law.

(d) Perform such other and further duties as will be required of him by the corporation or by the Board of Direc-

tors or by statute.

ARTICLE X-EXPENSE OF OPERATION

Each member of the corporation shall contribute to the operating expense of this corporation ratably according to the volume of milk marketed through the corporation.

ARTICLE XI-AUDITS

A complete annual audit of the books and accounts of the corporation shall be made by a competent accountant prior to the date of the regular annual meeting, at which meeting a report of such audit shall be presented in full. Special audits shall be made upon order of the Board of Directors.

ARTICLE XII-AMENDMENTS

Unless otherwise provided by law, these by-laws may be amended by a majority vote of the members of the corporation entitled to vote at meetings of the corporation.

ABTICLE XIII-DISSOLUTION

In the event of the corporation's dissolution all surplus after all outstanding certificates of ownership have been redeemed in full shall be distributed by uniform dividends to its members upon the amount of sales through this corporation for its members.

ARTICLE XIV-WITHDRAWAL OR RESIGNATION

Membership in this corporation may be terminated by any member in the manner and at the time provided in the marketing contract executed by the member and the corporation.

EXHIBIT 6.

We, Frank W. Clark, Richard Pattee, Leslie E. McIntire, Elmer M. Poole, Willis D. F. Hayden, R. Allen Sikes, Heman Stannard, being a majority of the directors of the New England Milk Producers' Association elected at its first meeting in compliance with the requirements of section 11 of chapter 437 of the Acts of 1903, do hereby certify that the following is a true copy of the agreement of association to form

said corporation, with the names of the subscribers thereto: "We, whose names are hereto subscribed, do, by this agreement, associate ourselves with the intention of forming a corporation according to the provisions of chapter 437 of the Acts of the year 1903 of the Commonwealth of Massachusetts, and the acts in amendment thereof and in addition

thereto, more particularly chapter 224 of the General Acts of the year 1917.

The name by which the corporation shall be known is New England Milk Producers' Association.

The location of the principal office of the corporation within the Commonwealth is the City of Boston and outside the Commonwealth none.

The purpose for which the corporation is formed and the nature of the business to be transacted by it are as follows:— The incorporating of the existing voluntary association, named the New England Milk Producers' Association, keeping the same officers, membership, by-laws and regulations, we being duly empowered thereto by a vote of said association.

This association is an agricultural association, instituted for the purposes of mutual help and of doing business at cost for the benefit of its members. More particularly its purposes are to enable its members to secure the full market value of their dairy products; to improve the methods of milk production, distribution, manufacture and use; to buy and sell for its members; to encourage the breeding and raising of better dairy stock; to promote the more economical feeding of dairy stock; to promote the legislative interests of the dairy industry; to foster co-operation in agriculture, and especially in dairying; and, in general, to improve agricultural conditions, and bring about a better understanding between the producers of dairy products and the consumers thereof.

The total amount of its capital stock to be authorized is none, it being exempted from having capital stock.

(Note: State "the restrictions, if any, imposed upon the transfer of stock; and if there are to be two or more classes of stock, a description of the different classes and a statement of the terms on which they are to be created and the method of voting thereon.")

The New England Milk Producers' Association shall be composed of dairy farmers residing in New England states or selling their dairy products in New England markets.

There shall be four classes of membership, and a member may belong to more than one class;

First. Local membership, to consist of all the members of the association.

Second. County voting membership, to consist of certain members designated annually for that purpose by the various local branches within each county.

Third. Market voting membership, to consist of certain members designated annually for that purpose by such local members as sell to any one market other than Boston or New York.

Fourth. Association voting membership, to consist of certain members designated annually for that purpose by the county voting members of the various counties.

There shall be no proxy voting in the association, or any branch thereof.

(Note: State any other provisions not inconsistent with law for the conduct and regulation of the business of the corporation, for its voluntary dissolution, or for limiting, defining or regulating the powers of the corporation, or of its directors or stockholders, or any class of stockholders.)

To manage its affairs efficiently and to carry out its purposes, the New England Milk Producers' Association shall be organized on the following basis:

First. Local branches, consisting of all the members of the association within any given vicinity, each member having one vote in the affairs of his branch. Second. County branches, consisting of all the members of the association within any given county; a certain designated class of members to have the right to vote in the affairs of the county branches.

Third. Market branches, consisting of all the members of the association who sell in any given market, except Boston and New York; a certain designated class of members to have the right to vote in the affairs of the market branches.

Fourth. The association as a whole, consisting of all its members; a certain designated class of members to have the right to vote in the affairs of the association as a whole.

(If notice is waived, use the following form.)

We hereby waive all requirements of the statutes of Massachusetts for notice of the first meeting for organization, and appoint the twenty third day of May, 1917, at 10:30 o'clock A.M., at 26 Broad St., Boston, Mass. as the time and place for holding said first meeting.

The names and residences of the incorporators are as follows:

Name

Frank W. Clark Richard Pattee Leslie E. McIntire Residence

Williston, Vt. Boston, Mass.

East Waterford, Maine.

In witness whereof, we have hereunte set our hands, this twenty third day of May in the year nineteen hundred and seventeen

Frank W. Clark Richard Pattee Leslie E. McIntire

That the first meeting of the subscribers to said agreement was held on the twenty third day of May, 1917.

The name, residence and post-office address of each of the officers are as follows:

Exhibits

Name of Office	Name	Residence	1	Post-Of	Noe .	Address	
President,	Frank W. Clark	Williston, Vt.	36	Broad	St.,	Boston	
	Frank S. Adams	Bowdoinham, Me.	44	44	44	44	
Treasurer,	Edwin P. Wilcox	Littleton, N. H.				44	
Clerk.	Richard Pattee	Boston, Mass.	4.6				4
	Frank W. Clark	Williston, Vt.	44	44	44	44	
2	Richard Pattee	Boston, Mass.	4 6		4 6	*44	**
*	Lealie E. McIntire	East Waterford, Me.				. 66	
	Willis D. F. Hayden	Dover, N. H.	4.6	. ee .	4 6		
1	Heman Stannard	Fairhaven, Vt.	64	ce.			
	Elmer N. Poole	So. Dartmouth, Mass.					
	R. Allen Sikes	Ellington, Conn.	6 6			44	
	Edward H. Theinert		61		8.0	44	
	George B. Little	Schaghticoke, N. Y.	- 60		-	44	

In Witness Whereof, we have hereunto signed our names, this twenty-third day of May in the year nineteen hundred and seventeen

FRANK W. CLARK
RICHARD PATTEE
LESLIE E. McIntire
ELMER N. POOLE
WILLIS D. F. HAYDEN
R. ALLEN SIKES
HEMAN STANNARD

THE COMMONWEALTH OF MASSACHUSETTS
Suffolk ss. May 23 1917

Then personally appeared the above-named Frank W. Clark, Richard Pattee, Leslie E. McIntire, Elmer N. Poole, Willis D. F. Hayden, R. Allen Sikes, and Heman Stannard, and severally made oath that the foregoing certificate, by them subscribed, is true to the best of their knowledge and belief.

Before me,
ROGER SHERMAN HOAR
Justice of the Peace.

Exhibits

By-Laws And Regulations 1936

New England Milk Producers' Association 51 Cornhill, Boston

N.E.M.P.A.

New England Milk Producers' Association
By-Laws and Regulations
Revised to January 1, 1936

ARTICLE I-NAME

New England Milk Producers Association.

ARTICLE II-PURPOSES

Section 1. The purposes of this Association shall be to enable its members to secure the full market value of their dairy products; to improve the methods of milk production, distribution, manufacture and use; to encourage the breeding and raising of better dairy stock; to promote the more economical feeding of dairy stock; to promote the legislative interests of the dairy industry; to foster co-operation in agriculture, and especially in dairying; and, in general to improve agricultural conditions, and bring about a better understanding between producers of dairy products and the consumers thereof.

ARTICLE III-FORM, MEMBERSHIP, ORGANIZATION

SECTION 1. The New England Milk Producers' Association shall be composed of dairy farmers residing in New England states or selling their dairy products in New England markets.

SECT. 2. To efficiently manage its affairs and carry out its purposes, the New England Milk Producers' Association shall be organized on the following basis:

First: Local Association: Composed of the dairy farmers of any vicinity who have subscribed to the by-laws and regulations of the New England Milk Producers' Association.

Second: Central Association: Composed of the Presidents of Local Associations of the New England Milk Producers' Association, except as hereinafter provided.

Third: Market Association: Composed of delegates from local associations whose members sell in any market other than Boston or New York.

ARTICLE IV-RIGHTS OF MEMBERS

Section 1. Each member of the New England Milk Producers' Association shall execute a marketing and membership contract with the Association in such form and for such period and upon such terms and conditions as the Board of Directors may from time to time determine. The Board of Directors shall have the right from time to time to alter or amend the marketing and membership contracts, provided, however, that such alteration or amendment shall only affect the members consenting thereto and shall not affect the contracts of the members who do not consent thereto nor operate to release them therefrom.

Sect. 2. Every member of this Association shall be entitled to one vote in any branch of the Association of which

he is a member.

Sect. 3. Every member of this Association shall be eligible to any office in any branch thereof, in whose jurisdiction he resides.

SECT. 4. There shall be no proxy voting in this Associa-

tion, nor any branch thereof.

Sect. 5. Any member of the Association who has not paid dues for eighteen months, shall automatically be suspended for non-payment of dues. Such member shall be notified when dues are in arrears fourteen months in such as the Board of Directors shall determine. Such member shall lose all rights and privileges in the Association. Such member may be reinstated by payment of dues accrued for the twelve months prior to suspension.

ARTICLE V-LOCAL ASSOCIATION

Section 1. Five or more persons in any township or at any shipping station, or other unit of local area, qualified for membership in this Association, who have subscribed to its by-laws, and regulations may organize a local Association of the New England Milk Producers' Association.

SECT. 2. It shall be the duty of every local Association to care for and have charge of the local interests of its members and to carry out within its jurisdiction the work assigned to it by the central and market associations of this association.

SECT. 3. Every local association shall hold an annual meeting for the election of officers on some date after the annual meeting of the central association and before January 1 of the following year, and such other meetings as its regulations may require.

Sect. 4. The officers of every local association shall consist of a president and a secretary-treasurer and such other officers and committees as the local association shall determine.

SECT. 5. It shall be the duty of the officers of every local association to make such reports to the central and market associations as those associations may require, and to perform such other duties as are required by its regulations.

SECT. 6. The Board of Directors are hereby empowered to revoke the charter issued to any local association for cause. It shall be the cause for such revocation that the local association shall have refused or neglected to perform the duties imposed upon such local association by these by-laws or other orders of the central association. A two-thirds vote of the Board of Directors shall be necessary to revoke any charter in accordance with this section.

SECT. 7. No local association shall contract debts or liabilities in excess of the amount due the local association from the central association without the consent in writing of the Board of Directors of the Central Association.

SECT. 8. No local association shall engage in or undertake any new projects involving the credit of the associa-

tion without the consent in writing of the Board of Directors of the Central Association.

ARTICLE VI-CENTRAL ASSOCIATION

"Section 1. The members of the Central Association of the New England Milk Producers' Association shall consist of the Presidents and other representatives of local associations selected as hereinafter stated. To be entitled to a representative in the Central Association, a local association must have a membership of not less than 35, provided, however, that local associations which have membership of less than 35 may, by vote of the Board of Directors, be grouped with other local associations for the purpose of electing a delegate to represent such grouped local associations in the Annual Meeting. The Presidents of the Locals so grouped shall meet previous to the Annual Meeting of the Central Association and shall elect from their own number a delegate and alternate to represent the grouped locals at the Central Association meeting.

Local associations having a membership in excess of 35 shall be entitled to select an additionl delegate for each

additional 40 members in such local association.

The Presidents and delegates representing local associations having a membership of not less than 35 shall be authorized to designate their own alternate.

In determining membership under this section, only those members whose dues are paid up to September 1 of the year preceding the Annual Meeting shall be counted.

SECT. 2. The Central Association shall be the governing body of the New England Milk Producers' Association. It may, at its annual meeting, enact, amend or repeal such laws and regulations as the good of the association may require. All regulations of local or market associations must conform to these laws and the regulations adopted by the Central Association.

Sect. 3. The Central Association shall hold a meeting on the last Tuesday in October of each year in the city of Boston, Mass,, at such place and hour as its Board of Directors may determine, for the election of officers and the

transaction of such other business as may properly come before it.

SECT. 4. The officers of the Central Association shall consist of a President, a Vice-President, a Treasurer, and a Clerk, who shall be elected annually and a Board of Directors to be elected as provided in Section 5 of this article. Vacancies shall be filled by the Board of Directors. All officers shall be elected by ballot. The Clerk need not be a member of the Association.

SECT. 5. The Board of Directors shall consist of two members from each state entitled to representation in the Central Association, who shall serve for a period of two years each, one of whom shall be retired each year and his successor elected; and three directors at large for three years each, one of whom shall be retired each year and his successor elected. At the annual meeting in February, 1919, one director at large shall be elected for one year, one director at large for two years, and one director at large for three years. At such succeeding annual meeting, one director at large shall be elected to serve for a period of three years. At the annual meeting in February, 1919, one director from each state shall be elected for one year and one director from each state shall be elected for two years. At each succeeding annual meeting one director from each state shall be elected to serve for a period of two years. The directors from each state shall be nominated by the members of the Central Association from that state. The clerk of the Central Association shall be ex-officio, a member of its directors.

SECT. 6. The duties of the officers shall be as laid down

in the regulations of this association.

SECT. 7. Fifty members of the Central Association shall constitute a quorum to do business. A majority of the Board of Directors shall constitute a quorum.

SECT. 8. The Board of Directors shall act under the direction of the Central Association and any powers vested in the Central Association may be delegated by it to the Board of Directors.

SECT. 9. The members of the Central Association from each state shall constitute a State Council for that State,

subject to control by the Central Association.

Sect. 10. The Board of Directors shall annually elect an executive committee of the directors, consisting of five directors, who shall have all the powers incidental to such a committee and such other powers as the Board of Directors may delegate to it.

Sect. 11. Members shall be notified at least ten days before any regular or special meeting of the Association shall be called by publishing a notice of such meeting in the New England Dairyman or by mailing a copy of such notice postpaid to each member at his residence as it appears

upon it a records of the Association.

SECT. 12. The Directors shall be notified at least two days before any regular or special meeting of the Board of Directors by mailing a copy of the notice of such meeting postpaid to the address of each Director as it appears upon the books of the Association or in such other manner as the Board of Directors may by vote prescribe.

ARTICLE VII-MARKET ASSOCIATIONS

Section 1. Ten or more members of any local association who sell their dairy products in any market other than Boston or New York, may designate a delegate to a market association bearing the name of the market in which their products are sold. If less than 10 members of any local association sell their products in any market they may be classed with the members of the nearest local association entitled to a delegate to a market association as above, or they may consolidate with other local associations who sell their dairy products in any market other than Boston or New York, until the total number of such members selling in that market shall be at least ten, when they shall be entitled to designate one voting member of the market branch, if any, bearing the name of the market in which their products are sold.

The market association shall consist of delegates chosen as above. It shall meet at least once each year in the market town where the products of its members shall be sold.

- SECT. 2. Every market association shall have a President and a Secretary-Treasurer and an Executive Committee of four persons and such other officers and committees as its regulations may provide. The Board of Directors of the Central Association shall designate one person who shall be a member of the executive committee thereof.
- SECT. 3. It shall be the duty of every market association to carry out the purposes of the New England Milk Producers, Association in the market which it represents, and to secure for all members of this association, proper treatment in all matters pertaining to their interests in said market.
- SECT. 4. No market committee of any local market association shall refuse to sell the milk of members of the association in the market governed by them without the consent of the Board of Directors or the Executive Committee thereof.

ARTICLE VIII-CHARTERS

SECTION 1. The president and clerk of the central association shall issue certificates of authority to local and market associations organized in compliance with these laws and approved by the Board of Directors of the central association.

ARTICLE IX-FINANCE

Section 1. The revenues of this association shall be raised by such means as may be set forth in the regulations and the members shall be bound thereby.

ARTICLE X-AMENDMENTS AND REGULATIONS

SECTION 1. Regulations not inconsistent with these by laws may be adopted by local and market associations of the New England Milk Producers' Association, subject to the approval of the Central Association or its Board of

Directors. Amendments thereto may be made at any annual meeting called for that purpose, due notice thereof having been given.

Sect. 2. These by-laws may be amended by a two-thirds vote at any regular or special meeting of the central asso-

. ciation.

REGULATIONS

Section 1. The directors shall have entire charge of the property, interests, business and transactions of the Association with full power to manage and conduct the same; in the event of any vacancy in any office or in the Board of Directors, the Board of Directors shall have power and authority to fill such vacancy for the unexpired term; shall annually elect from their own number a President and Vice-President to serve for the ensuing year, shall annually elect a General Manager and may elect an Assistant Treasurer and provide for the duties of all officers and employees not provided for in the By-Laws. The Board of Directors shall have the right to designate persons who may be authorized to sign checks or other instruments on behalf of the Corporation. The Board of Directors shall have the right to remove any officer for cause by a two-thirds vote of the entire membership of the Board.

The Board of Directors shall have authority to undertake or participate in any plan or plans having for their purpose the more effective marketing of the products of the members of this association and in connection therewith to engage in or participate in any plan or plans having for their purpose the stabilizing of conditions in the markets in which the products of members of this associa-

tion may be sold.

The President shall preside over all meetings of the Association and its Board of Directors; shall with the Clerk sign all charters to local and market associations; shall sign, when duly authorized thereto, all contracts, orders, deeds, notes, liens, licenses and other instruments of a special nature; shall perform the duties usually required

of a presiding officer and shall perform such other and further duties as the Board of Directors may require.

The Vice-President in the absence, disability, death, or refusal to act of the President, shall possess all of the powers and perform all of the duties of the President.

The Clerk shall keep full minutes of all meetings of the Association and of the Board of Directors; shall read such records at the proper subsequent meetings; shall issue all calls for meetings and notify all officers and directors of their election; shall have charge of and keep the seal of the Association and affix the seal, attested by his signature, to all instruments as may require the same. He shall perform such other and further duties as the Board of Directors may properly require him to do.

The Treasurer shall have custody of and be responsible for all moneys and securities of the Association, shall keep full and accurate records and accounts in books belonging to the Association showing the transactions of the Association, its accounts, liabilities and financial condition; shall see that all expenditures are fully authorized and are evidenced by proper receipts and vouchers. He shall deposit in the name of the Association in such depository of depositories as are approved by the Directors, all moneys that may come into his hands for the Association's account. His books and accounts shall be open at all times during business hours to the inspection of any Director of the Association. He shall indorse for collection or deposit, all bills, notes, checks or other negotiable instruments of the Association, shall pay out money as may be necessary for the transactions of the Association, either by special or general direction of the Board of Directors. He shall make a full report of the financial condition of the Association for the annual meeting of the members of the Association and shall make such other reports and statements as may be required of him by the Board of Directors or by the laws of the State. He shall give bond in such sum and with such sureties as may be required of him by the Board of Directors. He shall perform such other and further duties as

may properly be required of him by the Board of Directors. The General Manager shall, under the supervision of the Board of Directors, have charge of and manage the active business operations of the Association. He shall perform such further duties and make such reports as may be required of him by the Board of Directors and shall receive such salary as may be fixed by the Board.

The Central Association at its annual meeting shall elect two auditors who shall at the close of each year, inspect the books and accounts of the treasurer and report thereon

at the next annual meeting.

The auditors so elected may employ a certified public accountant to examine the books and accounts of the treasurer in their behalf.

Financial Affairs

SECTION 2. The fiscal year shall end July 31st of each year.

Each member shall pay to the Association monthly at its principal office such amounts per hundredweight of milk or its equivalent sold by such member as the Board of Directors may from time to time deem necessary to conduct the business and operations of the Association, including the establishment and maintenance of reserve accounts, provided, however, that until such time as the Central Association at a regular or special meeting shall otherwise order such amounts shall not exceed 2¢ per hundredweight of milk or its equivalent.

The Board of Directors shall have the right to establish the amounts to be paid to the Association by each member who is engaged in the production and sale of cream as such, provided, however, that such amounts shall not exceed 1/2¢ per pound butterfat in cream sold by such member.

The Board of Directors shall be empowered to authorize the local associations to draw upon the Central Association in such amounts as the Board of Directors may determine, for the fell.

for the following purposes:

- (a) To pay the legitimate current expenses of the local associations as certified by their Presidents and Secretaries.
- (b) To pay the railroad travel and hotel expenses of the President or duly chosen representatives of the local associations in attending the Annual or Special Meetings of the Central Association.

The members of the Central Association shall receive from the Treasurer their actual railroad travel and hotel expenses in attending its Annual Meeting or any duly called Special Meeting.

Section 3. Each member shall pay monthly to the Association an additional dues of 1¢ per hundredweight of milk sold by such member or such amount not exceeding ¼¢ per pound of butterfat in cream sold by member engaged in the production and sale of cream as such, as may be determined by the Board of Directors. Such amount shall be payable monthly at the principal office of the Association. The moneys so received shall be paid into a special fund to be known as the "Emergency Reserve Fund" and shall be held subject to the supervision and direction of the Board of Directors of the Central Association. The purposes of said Emergency Reserve Fund are as follows:

(a) To reimburse members of the Association supplying New England Markets, for any losses which they may sustain by reason of the refusal of said producers to sell their dairy products on any other basis than the terms and conditions recommended by the Sales Committee of the New England Milk Producers' Association.

(b) To create a Reserve Fund to protect such members from loss of a market for their dairy products:

(c) To reimburse members of the Association for losses which such members may sustain through failure of a dealer to pay such members for dairy products delivered by such members to a dealer, provided, however, that the dealer to whom such member may have delivered dairy products shall be a dealer approved by the Association.

(d) To acquire by purchase or otherwise, such plant or plants as may be necessary to provide markets for the dairy products of members of the Association.

(e) To meet an extraordinary or unusual emergency

when so declared by the Board of I ectors.

SECTION 4. When in the opinion of the Board of Directors the said Emergency Reserve Fund shall have accumulated to an amount where no further accumulations are then necessary, the Board of Directors shall have the right to appropriate the moneys payable into said Emergency Reserve Fund during any year to the repayment to members of the Association, in the order of their contribution, the amounts previously paid into said fund.

Section 5. For the purpose of creating special funds to be used to build or otherwise acquire such plants and equipment, to provide such working capital, or to acquire an interest in any such property, as the Association may deem necessary or desirable, the Association may upon authorization of the Central Association at a regular or special meeting, due notice of this purpose having been included in the call for such meeting, withhold from the amounts due the members for milk sold in accordance with the terms of the marketing contracts between members and the Association, such sums as the Board of Directors may deem necessary or advisable for such purposes. After the close of each calendar year each member shall receive a certificate in such form and on such terms and conditions as the Board of Directors may from time to time determine evidencing the member's proportionate interest in such assets.

Section 6. The Board of Directors shall have the right to fix their compensation, provided, however, that such compensation shall not exceed \$10.00 per day for time actually spent in the business of the Association plus their nec-

essary travelling expenses.

Section 7. The Board of Directors shall have the right to authorize any member to sell dairy products produced by such member, in any market.

Exhibits

EXHIBIT 7.

AVERAGE BUTTER QUOTATIONS U. S. D. A.—92 Score Fresh Butter at Boston (Cents Per Pound)

			1			
	1932	1933	1934	1935	1936	1937
Jan.	24.41	20.54	20.99	34.63	35.21	34.43
Feb.	23.31	19.28	26.29	37.00	37.34	34.77
Mar.	23.19	19.12	26.41	32.68	32.74	36.31
Apr.	20.65		24.58	35.48	31.63	33.46
May	19.15		25.70	28.30	28.01	32.71
June	17.64		25.86	25.18	30.21	31.44
July	19.02	25.54	25.45	24.88	34.21	32.19 33.40 35.38
Aug.	20.77	22.27	28.20	25.83	36.33	
Sept.	21.25	24.06	26.63	26.82	35.54	
Oct.	21.21	24.88	27.52	28.77	33.32	36.38
Nov.	23.75	24.56	29.90	32.93	34.14	38.54
Dec.	24.71	20.93	31.62	34.79*.	34.75	39.35
Year	21.59	22:40	26.59	30.61	33.62	34.86

Exhibits

AVERAGE BUTTER QUOTATIONS
Boston Chamber Creamery Extras
U. S. D. A.—92 Score Fresh Butter
(Cents Per Pound)

Jan. 48.1 61.6 63.7 52.7 37.00 51.70 53.10 39.62 45.25 48.62 48.76 37.08 29.10 24.41 20.54 25.08 Feb. 49.5 60.0 64.2 46.8 36.03 50.75 51.62 40.75 45.38 51.86 46.93 48.98 36.48 28.91 23.31 19.28 20.90 Mar. 45.0 61.0 64.2 48.0 38.10 47.50 47.00 43.26 50.95 49.62 48.85 37.82 29.38 37.82 29.38 37.82 29.38 37.62 39.39 41.10 43.76 45.38 37.62 49.50 49.62 48.85 37.82 29.38 29.04 20.93 39.93 40.10 43.26 50.95 44.02 48.85 37.82 29.39 40.90 45.38 44.07 44.08 39.34 41.00 43.28 44.07 44.06 33.38 43.39 41.80 45.39 <th< th=""><th>V.</th><th>1018</th><th>1018 1019</th><th>1920</th><th>1921</th><th>1922</th><th>1923</th><th>1924</th><th>1925</th><th>1926</th><th>1927</th><th>1928</th><th>1929</th><th>1930</th><th>1931</th><th>1932</th><th>1988</th><th>1984</th></th<>	V.	1018	1018 1019	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1988	1984
49.5 60.0 64.2 46.8 36.63 50.75 51.62 40.75 45.38 51.86 46.93 46.98 36.48 28.91 23.31 19.28 45.0 61.0 66.4 48.0 38.10 51.00 47.50 47.00 43.26 50.95 49.62 48.85 37.82 29.38 23.19 19.18 42.7 65.0 67.5 45.6 37.88 47.50 39.00 42.96 51.08 46.00 46.22 39.04 26.73 20.65 21.50 44.4 59.0 66.0 32.8 41.00 43.26 41.04 46.02 35.40 26.73 20.65 21.50 21.50 24.30 19.18 23.25 24.02 19.18 26.26 44.47 44.06 35.38 41.04 43.76 45.39 42.44 44.06 33.38 42.94 45.66 44.47 44.06 33.38 23.94 45.26 44.47 44.06 33.38 42.94 45.2	fan.	48.1	61.6	1	52.7	37.00	51.70	53.10	39.65	45.25	49.53	48.62	48.76	37.08	29.10	24.41	20.54	25.08
45.0 61.0 66.4 48.0 38.10 51.00 47.50 47.00 43.26 50.95 49.62 48.85 37.82 29.38 23.19 19.12 42.7 65.0 67.5 45.6 37.88 47.50 39.10 45.50 39.96 51.08 46.00 46.22 39.04 26.73 20.65 21.50 44.4 59.0 60.0 32.1 36.60 42.40 39.00 42.98 41.10 43.76 45.38 .44.02 35.42 24.30 19.15 23.25 44.1 52.1 57.0 32.8 36.88 39.50 41.00 43.26 41.56 42.62 44.47 44.06 33.38 23.97 17.64 23.78 44.8 53.2 57.0 40.5 36.50 39.38 40.10 43.54 40.91 41.80 45.32 42.77 35.65 25.48 19.02 25.54 46.2 55.1 56.1 42.4 36.00 43.70 38.38 43.98 41.86 42.06 47.12 43.98 39.38 28.27 20.77 22.27 53.9 57.5 58.5 43.6 40.50 45.38 38.12 47.88 44.72 46.24 48.73 46.47 39.94 32.50 21.25 24.06 58.7 63.2 58.1 46.2 45.00 47.80 38.20 50.60 46.55 47.80 47.96 45.69 39.96 34.05 21.21 24.85 61.6 67.7 59.0 44.6 49.50 52.00 41.50 50.27 48.38 48.02 50.15 42.85 36.17 31.35 23.75 24.56 66.5 70.7 53.7 43.0 54.13 53.50 44.50 49.16 53.69 49.85 60.24 41.36 32.56 31.00 24.71 20.93 50.4 59.7 60.1 43.2 40.40 47.13 42.68 45.38 47.13 47.54 45.42 36.91 28.75 21.59 22.40	Peb	49.5	50.0	64.2	46.8	36.63	50.75	51.62	40.75		51.86	46.93	48.98	36.48	28.91	23.31	19.28	20.90
42.7 65.0 67.5 45.6 37.88 47.50 39.10 45.50 39.96 51.08 46.00 46.22 39.04 26.73 20.65 21.50 44.4 59.0 66.0 42.98 41.10 43.76 45.38 44.02 35.42 24.30 19.15 23.25 44.1 52.1 57.0 40.5 36.88 39.50 41.00 43.26 44.15 44.06 33.38 23.97 17.64 23.78 44.1 52.1 57.0 40.5 36.50 39.38 43.26 41.50 45.32 42.77 35.65 25.48 19.02 25.54 46.2 55.1 56.1 42.4 40.91 41.80 45.32 42.77 35.65 25.48 19.02 25.54 46.2 56.1 56.1 43.54 40.91 41.80 45.96 47.96 35.65 25.48 19.02 25.54 46.2 43.6 45.3 44.78 46	Mar.	45.0	61.0	66.4	48.0	38.10	51.00	47.50	47.00	43.26	50.95	49.62	48.85	37.82	29.38	23.19	19.12	26.29
44.4 59.0 60.0 92.1 36.60 42.98 41.10 43.76 45.38 .44.02 35.42 24.30 19.15 23.26 44.1 52.1 57.0 32.8 36.88 39.50 41.00 43.26 41.16 42.62 44.47 44.06 33.38 23.97 17.64 23.78 44.8 53.2 57.0 40.5 36.50 39.38 40.10 43.54 40.91 46.32 42.77 35.65 25.48 19.02 25.54 46.2 55.1 56.1 42.6 45.99 46.36 47.12 43.98 39.38 28.27 20.77 22.27 46.2 55.1 56.1 40.50 46.38 43.29 41.72 46.24 48.73 46.47 39.34 32.50 21.25 24.06 58.7 63.2 58.1 46.2 47.89 47.89 47.89 47.96 45.69 39.96 34.05 21.25 24.56 <td< td=""><td>Apr</td><td>42.7</td><td>65.0</td><td>67.5</td><td>45.6</td><td>37.88</td><td>47.50</td><td></td><td>45.50</td><td>-</td><td>51.08</td><td>46.00</td><td>46.22</td><td>39.04</td><td>26.73</td><td>20.65</td><td>21.50</td><td></td></td<>	Apr	42.7	65.0	67.5	45.6	37.88	47.50		45.50	-	51.08	46.00	46.22	39.04	26.73	20.65	21.50	
44.1 52.1 57.0 32.8 36.88 39.50 41.00 43.26 41.56 42.62 44.47 44.06 33.38 23.97 17.64 23.78 44.8 53.2 57.0 40.5 36.50 39.38 40.10 43.54 40.91 41.80 46.32 42.77 35.65 25.48 19.02 25.54 46.2 55.1 56.1 42.4 38.38 43.98 41.86 42.06 47.12 43.98 39.38 28.27 20.77 22.27 53.9 57.5 58.5 43.6 46.38 38.12 47.88 44.72 46.24 48.73 46.47 39.94 32.50 21.25 24.06 58.7 63.2 58.1 46.2 46.24 48.73 46.47 39.94 32.50 21.21 24.36 61.6 67.7 59.0 44.6 46.55 47.80 47.84 48.03 36.17 31.35 23.75 24.56 66.5 70.7 53.7 48.38 44.39 47.34 45.42 36.91	Мау	44.4	. 59.0	60.0	92.1	.36.60	42.40	39.00	42.98	41.16		45.38	.44.02	35.42	24.30	19.15	23.25	25.70
44.8 53.2 57.0 40.5 36.50 39.38 40.10 43.54 40.91 41.80 46.32 42.77 35.65 25.48 19.02 25.54 46.2 55.1 56.1 42.4 36.00 43.70 38.38 43.54 40.91 47.12 45.39 39.38 28.27 20.77 22.27 53.9 57.5 58.5 43.6 40.50 46.38 38.12 47.81 46.24 48.73 46.47 39.94 32.50 21.25 24.06 58.7 63.2 58.1 46.2 47.80 47.80 38.20 50.60 46.55 47.80 45.99 34.05 21.21 24.86 61.6 67.7 59.0 44.6 49.50 50.27 48.38 48.02 50.15 42.85 36.17 31.35 23.75 24.56 66.5 70.7 53.7 43.0 54.50 45.60 49.16 53.69 49.85 60.24 41.36 <	Tune	44.1	52.1	57.0	32.8	36.88	- "	41.00	43.26	41.56		44.47		33,38	23.97	17.64	23.78	25,86
46.2 55.1 56.1 42.4 36.00 43.70 38.38 43.98 41.86 42.06 47.12 43.98 39.38 28.27 20.77 53.9 57.5 58.5 43.6 40.50 46.38 38.12 47.88 44.72 46.24 48.73 46.47 39.94 32.50 21.25 58.7 63.2 58.1 46.2 45.00 47.80 38.20 50.60 46.55 47.80 47.96 45.69 39.96 34.05 21.21 61.6 67.7 59.0 44.6 49.50 52.00 41.50 50.27 48.38 48.02 50.15 42.85 36.17 31.35 23.75 66.5 70.7 53.7 43.0 54.13 53.50 44.50 49.16 53.69 49.85 60.24 41.36 32.56 31.00 24.71 50.4 59.7 60.1 43.2 40.40 47.13 42.68 45.38 44.39 47.13 47.54 45.42 36.91 28.75 21.59	July	44.8	53.2	57.0	40.5	36.50			43.54	40.91	41.80	46.32	42.77	35.65	25.48	19.05	25.54	25.45
53.9 57.5 58.5 43.6 40.50 46.38 38.12 47.88 44.72 46.24 48.73 46.47 39.94 32.50 21.25 58.7 63.2 58.1 46.2 45.00 47.80 38.20 50.60 46.55 47.80 47.96 45.69 39.96 34.05 21.21 61.6 67.7 59.0 44.6 49.50 52.00 41.50 50.27 48.38 48.02 50.15 42.85 36.17 31.35 23.75 66.5 70.7 53.7 43.0 54.13 53.50 44.50 49.16 53.69 49.85 60.24 41.36 32.56 31.00 24.71 50.4 59.7 60.1 43.2 40.40 47.13 42.68 45.38 44.39 47.13 47.54 45.42 36.91 28.75 21.59	Ano	46.2	55.1	56.1	42.4	36.00		38.38	43.98	41.86	42.06	47.12	43.98	39.38	28.27	20.77	22.27	
66.5 70.7 53.7 43.0 54.10 47.30 38.20 50.60 46.55 47.80 47.96 45.69 39.96 34.05 21.21 66.5 70.7 53.7 43.0 54.13 53.50 44.50 49.16 53.69 49.85 60.24 41.36 32.56 31.00 24.71 50.4 59.7 60.1 43.2 40.40 47.13 42.68 45.38 44.39 47.13 47.54 45.42 36.91 28.75 21.59	Sent	53.9	57.5	58.5	43.6	40.50		38.12	47.88	44.72	46.24		46.47		32.50	21.25	24.06	
61.6 67.7 59.0 44.6 49.50 52.00 41.50 50.27 48.38 48.02 50.15 42.85 36.17 31.35 23.75 66.5 70.7 53.7 43.0 54.13 53.50 44.50 49.16 53.69 49.85 60.24 41.36 32.56 31.00 24.71 50.4 59.7 60.1 43.2 40.40 47.13 42.68 45.38 44.39 47.13 47.54 45.42 36.91 28.75 21.59	Det	58.7	63.2	. 58.1	46.2	45.00		38.20	50.60	46.55	47.80		45.69		34.05	21.21	24.85	
66.5 70.7 53.7 43.0 54.13 53.50 44.50 49.16 53.69 49.85 50.24 41.36 32.56 31.00 24.71 50.4 59.7 60.1 43.2 40.40 47.13 42.68 45.38 44.39 47.13 47.54 45.42 36.91 28.75 21.59	Nov.	61.6	67.7	59.0	44.6	49.50		41.50	50.27	48.38	48.02	50.15	42.85	36.17	31,35	23.75	24.56	
50.4 59.7 60.1 43.2 40.40 47.13 42.68 45.38 44.39 47.13 47.54 45.42 36.91 28.75 21.59	Dec.	66.5	70.7		43.0	54.13		44.50	49.16	53.69	49.85	50.24	41.36	32.56	31.00	24.71	20.93	
	Year	50.4	59.7		43.2			45.68		44.39	47.13	47.54	45.42	36.91	28.75	21.59	22.40	

(1) Changed from Boston Chamber to U.S.D.A. April 1, 1925.

EXHIBIT 8.

Abstract from Minutes of Meeting of the Milk Control Board 209 Washington Street, Boston Wednesday, June 23, 1937

A meeting of the Milk Control Board was called by Mr. James O'Brien, Chairman of the Board, at 2:10 p.m.

Mr. Joseph C. Cort, Administrator Mr. John M. Whouley, Secretary

Upon motion duly made and seconded, it was voted unanimously that Official Order No. A32, which reads as follows, shall be adopted:

Official Order No. A32

Fixing the terms and conditions of purchase and minimum prices to be paid producers by milk dealers in Milk Marketing Area No. 17.

Pursuant to authority granted to the Milk Control Board by virtue of Chapter 376 of the Acts of 1934, as amended by Chapter 300 of the Acts of 1936, and further amended by Chapter 428 of the Acts of 1937, and as a result of an investigation and examination laving been made, and due deliberation having been had, and by vote of the members of the Milk Control Board at their meeting on Wednesday, June 23, 1937, it is hereby ordered

That on and after 12:01 A. M., July 1, 1937, each milk dealer in Milk Marketing Area No. 17, purchasing milk from Massachusetts producers for sale within the Commonwealth, shall account and pay for such milk, subject to the provisions set forth in the following articles:

ARTICLE I

Definition of Terms not Included in Section 3, Chapter 376 of the Acts of 1934, as Amended.

1. Milk Marketing Area No. 17 includes the following cities and towns: Arlington, Belmont, Beverly, Boston,

Braintree, Brookline, Burlington, Cambridge, Chelsea, Dedham, Everett, Hull, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, North Reading, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Wilmington, Winchester, Winthrop, Woburn.

2. The delivery period means the number of days specified in the milk dealer's application for a milk plant or manufactory license under the bonding law (Chapter 338 of the Acts of 1933) or some other period approved by the Milk Control Board and not in conflict with the requirements of the bonding law.

3. "Base" for each producer, including each dealer who is also a producer, means that figure calculated pursuant to Article VI Section 3.

ARTICLE II-Classification of Milk.

Section 1. Sales and Use Classification. Milk purchased or handled by dealers shall be classified as follows:

1. All milk sold or distributed as whole milk, chocolate milk or flavored milk, and all milk not specifically accounted for as Class II milk shall be Class I milk; and

2. Milk specifically accounted for (a) as being sold of distributed other than as whole milk, chocolate milk or flavored milk and (b) as actual plant shrinkage within reasonable limits, shall be Class II milk.

ARTICLE III-Minimum Prices.

Section 1. Class I Prices to Associations of Producers. Each dealer shall pay any association of producers for Class I milk containing 3.7 percent butterfat, subject to the butterfat differential set forth in Section 3 of Article VII, not less than the following prices:

1. \$3.35 per hundredweight for such milk delivered from the plant of such association to such dealer's plant located not more than forty (40) miles from the State House in Boston: and 2. \$3.30 per hundredweight for such milk delivered from the plant of such association to such dealer at a railroad delivery point not more than forty (40) miles from the State House in Boston.

Section 2. Class I Prices to Producers. Each dealer shall pay producers, in the manner set forth in Article VII, for milk delivered by them, not less than the following prices:

1. \$3.25 per hundredweight for such milk delivered from producers' farms to such dealer's plant located not more than forty (40) miles from the State House in Boston;

2. \$3.05 per hundredweight for such milk delivered from producers' farms to such dealer's plant located more than forty (40) miles from the State House in Boston, less an amount per hundredweight equal to the freight actually paid according to the applicable tariff approved by the Interstate Comperce Commission for the transportation of milk in 40-quart cans, from the zone of location of such dealer's plant to such dealer's railroad delivery point in the Marketing Area.

Section 3. Class II Price. The minimum price for Class II milk in Milk Marketing Area No. 17 shall be calculated by the Milk Control Board using a formula based on either the reported weighted average price of 40% bottling quality cream f.o.b. Boston, or from the reported price of Boston 92 score butter for each delivery period during which such milk is purchased.

Section 4. Sales of Milk Outside the Marketing Area. In the event that any dealer sells milk in Areas outside of Marketing Area No. 17 such sales are to be accounted for according to the prices, terms and conditions of sale established by the Board for the Market Area where such sales are made and payment shall be made to producers on the basis of such prices, terms and conditions of sale for only that portion of milk sold outside of Area No. 17, otherwise prices, terms and conditions of sale pertaining to Area No. 17 shall apply.

Section 5: Announcement of Class II Prices. On or before the fifth day after the end of each delivery period,

the Board will announce the Class II price and the butterfat differential in effect for such delivery period.

ABTICLE IV-Reports of Dealers.

Section 1. Periodic Reports. On or before the fifth day after the close of each delivery period, each dealer shall, with respect to milk and cream handled by him during such delivery period, report to the Board in the detail and form prescribed by the Board and at office or offices as the Board may from time to time designate for this purpose.

Section 2. Reports as to Producers. Each dealer shall report to the Board (1) within ten days after the Board's request, with respect to any producer or group of producers with respect to a period or periods of time designated by the Board (a) name and address of each producer, (b) total pounds of milk delivered by each producer, (c) average butterfat test of milk delivered and (d) the number of days on which deliveries were made.

Section 3. Daily Statements to Producers. On each day, each dealer shall furnish to each producer from whom he purchases milk, a statement of the quantity of milk delivered to him by such producer during the preceding day or the day of delivery.

Section 4. Outside Cream Purchases. Each dealer shall report as requested by the Board, his purchase, if any, of cream from dealers, showing the quantity and the source of

each such purchase and the cost thereof at Boston.

Section 5. Verification of Reports. Each dealer shall permit the Board or its employees or agents designated for the purpose, during the usual hours of business, to (a) verify the information contained in reports submitted in accordance with this article; and (b) weigh, sample and test milk for butterfat.

ARTICLE V-Dealers who are also Producers.

In the case of a dealer who is also a producer and has purchased milk from producers, in the applicable computation set forth under Article VII, such dealer may subtract the total sales of milk in each class, the milk purchased

from other dealers and compute the milk purchased from producers in each-class according to such dealer's remaining total sales of milk in each class.

ARTICLE VI-Determination of Prices to Producers.

Section 1. Computation of Value of Milk for each Dealer. For each delivery period the Board shall compute, subject to the provisions of Article V the value of milk sold or used by each dealer which was not purchased from other dealers, by (a) multiplying the quantity of such milk in each class by the price applicable pursuant to Sections 1 and 2 of Article III and (b) adding together the resulting value of each class.

Section 2. Computation and Announcement of Prices. The Board shall compute and announce the price per hundredweight of milk delivered during each delivery period in the following manner:

- 1. In the event that the Class I milk of such dealer is less than the total quantity of milk which was delivered by producers not in excess of their individual bases; subtract from the total value computed pursuant to Section 1 the value of milk delivered by producers in excess of their individual bases at the Class II price, and, divide the amount remaining by the total quantity of milk delivered to such dealer by producers not in excess of their individual bases, such result being known as the blended price for "base milk" for such dealer;
- 2. In the event that the Class I milk of such dealer exceeds the total quantity of milk delivered by producers not in excess of their individual bases subtract from the total value computed for such dealer pursuant to Section 1 the value of milk delivered by producers not in excess of their individual bases at Class I price, and divide the amount remaining by the total quantity of milk delivered to such dealer by producers in excess of their individual bases, such result being known as the blended price for "excess milk" for such dealer.

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Section 3: Base Rating. The base of each producer shall be a quantity of milk for such delivery period calculated in the following manner: multiply the figure determined pursuant to Section 4 of this article by the number of days on which such producer delivered milk during such delivery period.

Section 4. Bases. For calculating pursuant to Section 3 of this Article, bases in effect during each calendar year, the Board shall determine with respect to milk, or the milk equivalent of cream, delivered in bulk to dealers from the farm operated by such producer:

1. That figure which is the highest of (a) the average daily deliveries during the three lowest months of the next preceding calendar year, and (b) 80% of the average daily deliveries throughout such next preceding calendar year.

2. In the case of a producer who, as a tenant or landlord, moves his entire herd from one farm to another farm, the higher of the two figures from which have been calculated pursuant to Section 3 above respectively (a) the base in effect for the farm from which the berd is moved and (b) the base in effect for the farm to which the herd is moved.

Section 5. Dealers Purchasing Milk from Producers not under Base Plan. In the event that a dealer secures approval of the Board to buy on a so called "composite price plan" from producers the computation and announcement of prices shall be as follows: Divide the value obtained pursuant to Section 1 of this Article by the total quantity of milk delivered by producers, the result being known as the "blended price" for such dealer.

Section 6. Dealers purchasing milk from Producers not under Base Plan or Composite Plan. In the event that a dealer secures approval of the Board to buy on a se called "flat price plan" from producers the computation and announcement of prices shall be as follows: multiply the Class I price by the total quantity of milk delivered by each producer delivering to such dealer.

ARTICLE VII-Payments for Milk.

Section 1. Time and Method of Payment. On or before the 15th day after the end of each delivery period, or some other day approved by the Milk Control Board, each dealer shall make payments, subject to the butterfat differential set forth in Section 3 of this Article, for the total value of milk received during such delivery period as required to be computed pursuant to Section 1 of Article VI, as follows:

1. At the blended price for base milk or at the Class I price as announced by the Board, pursuant to Section 2, Article VI for that quantity delivered by each producer not

in excess of the base of such producer.

2. At the Class II price, or at the blended price, as announced by the Board pursuant to Section 2 of Article VI, for that quantity of milk delivered by each producer in excess of his base.

3. In the event that such dealer has secured approval therefore pursuant to Section 5 Article VI, at the composite price as announced by the Board for all milk de-

livered by producers to such dealer.

4. In the event that such dealer has secured approval of the Board, pursuant to Section 6 of Article VI, at the Class I price for all milk delivered by producers to such dealer. Section 2. Correction of Producer Payment Errors. In case incorrect payments have been made by a dealer to his producers, for any reason, such errors shall be corrected when payments are made for the next delivery period following official notification of such errors, unless otherwise approved by the Board.

Section 3. Butterfat Differentials. If any producer has delivered to any dealer during any delivery period milk having an average butterfat content of other than three and seven-tenths (3.7%) percent, such dealer shall pay to such producer per one-hundred pounds for each one-tenth of one percent (1/10%) of average butterfat content above three and seven-tenths percent (3.7%), or shall deduct per hundred pounds for each one-tenth of one percent (1/10%) of average butterfat content below three and seven-tenths

percent (37%), an amount to be fixed and announced by the Milk Control Board for each delivery period.

Section 4. Additional Payments. Any dealer may with the prior approval of the Board, make payments to producers in addition to the payments computed in accordance with the provisions of this order.

Section 5. Special Adjustments in Payments to Producers. No dealer may accept services from or render services to a producer or an association of producers from whom he is purchasing milk, without receiving adequate compensation or making a reasonable payment or charge, as the case may be, for such services. Such compensation, payment or charges shall be (1) subject to the approval of the Board and (2) shall apply equitably to all producers supplying such dealer with milk. Each dealer making adjustments pursuant to this section may be required to make such reports and permit such examination of his books and records as the Milk Control Board may deem reasonable for the purpose of this provision.

Section 6. Allowable Deductions from Payments to Producers. Each dealer in making payments to his producers

for milk, may make deductions as follows:

1. When the dealer performs the serfice of transportation of milk from the producer's farm to the dealer's platform, the dealer shall be allowed to deduct for the transportation of the producer's milk only the reasonable cost of such service, provided that an agreement signed by all parties concerned, setting forth the understanding of all parties at interest as to such reasonable cost is filed with and subject to review and approval by the Board.

2. When the dealer supplies to the producer containers for transportation of milk from the farm to the dealer's plant, the dealer may deduct 3/4¢ per hundredweight as

rental for such containers.

3. Each milk dealer may deduct one-half of the applicable payment fixed by Official Order A3 from the amounts due from him to producers for milk.

4. Each dealer may deduct and pay to a producer's milk marketing association or behalf of its member such fees, asses ments or dues as may be authorized by the members of such association and approved by the Board.

ARTICLE VIII Producers' Co-operative Associations.

Producers' Co-operative associations shall be governed according to the provisions of Section 8, Chapter 428 of the Acts of 1937.

ARTICLE IX-Transactions with Violators.

No dealer shall purchase milk or cream from, or process or distribute milk or cream for or sell milk or cream to any dealer or in any way deal or handle milk which he has reason to believe has previously been dealt in or handled in violation of any provision of Chapter 376 of the Acts of 1934, as amended, or of this or any other order lawfully made thereunder.

ARTICLE X-Prior Contracts.

Any contract or agreement entered into by a dealer prior to the effective date of this order covering the purchase, delivery and/or sale of milk and its products, shall be deemed to be superseded by the terms and conditions of this order, insofar as such contract or agreement is inconsistent with any provision of this order.

ARTICLE XI—Written Statement of Price Computations to Accompany Producer Payments.

Each milk dealer in making payment to his producers for deliveries of milk shall furnish each producer with an understandable written or printed statement of price computations in accordance with the provisions of Official Order No. A4 of the Milk Control Board.

ARTICLE XII-Volume and Weights of Containers.

For the purposes of the calculations in this order, the following volumes and weights shall be used:

A. The weight of one quart of milk shall be taken as two and fifteen hundreds (2.15) pounds.

B. One hundred pounds of milk shall be deemed to be equivalent to forty-six and one-half (46½) quarts of milk.

C. The milk contained in a forty quart can filled to the

neck shall be deemed to weigh eighty-five (85) pounds.

D. The milk contained in a twenty-quart (20) can filled to the neck shall be deemed to weigh forty-two and one-half-(42½) pounds.

E. The cream contained in a forty-quart (40) can of forty percent (40%) butterfat content, filled to the neck, shall be deemed to weigh eighty-two and one-half (82½) pounds and shall be deemed to contain thirty-three (33) pounds of butterfat.

This order shall become effective as herein above stated, to wit, July 1, 1937, at 12:01 A.M.

MILK CONTROL BOARD
Chairman
Administrator
Secretary

Upon motion duly made and seconded, it was voted unanimously that Official Order No. A-33, which reads as follows, shall be adopted:

Official Order No. A-33

Fixing minimum retail and wholesale prices for milk and cream in Area No. 17.

Pursuant to authority granted to the Milk Control Board by virtue of Chapter 376 of the Acts of 1934, as amended by Chapter 300 of the Acts of 1936, and further amended by Chapter 428 of the Acts of 1937, and as a result of an investigation and examination having been made and due deliberation having been had, and by vote of the members of the Milk Control Board at their meeting on Wednesday, June 23, 1937, it is hereby ordered

That on and after 12:01 A. M.; July 1, 1937, all sales of milk as defined in Section 3, Chapter 376 of the Acts of 1934, as amended by Chapter 300 of the Acts of 1936, and further amended by Chapter 428 of the Acts of 1937, in Marketing Area No. 17 shall be made at not less than the

applicable minimum prices, and in accordance with the rulings, set forth in the following articles:

ARTICLE I DEFINITION OF MILK MARKETING AREA No. 17

Milk Marketing Area No. 17 includes the following cities and towns: Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Burlington, Cambridge, Chelsea, Dedham, Everett, Hull, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, North Reading, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stonenam, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Wilmington, Winchester, Winthrop, Woburn.

ARTICLE II MINIMUM MILK PRICES

	Retail delivered by dealer to consumer.	Retail over counter by store to consumer.	Wholesale delivered
GRADE A MILK		*	
Quart bottles Pint "	\$.16	\$.15	\$.131/2
10-ounce "	**********	*	.06 .
Half-pint "	· . · · · · · · · · · · · · · · · · · ·		.05
40 quart cans	2		4.20
20 quart cans	**********		2.15
8 quart cans	*****	-	.90
MILK (MARKET)			
Quart bottles	.13	.12	.101/2
Pint "	09	.08	.061/2
10-ounce "	quincana.		.041/2
Half-pint "	· management	-	.031/4
40 quart cans	***********	-	3.60
20 quart cans	-	, marine ,	1.85
8 quart cans		-	.78
BUTTERMILK			*
Quart bottles	.10	09	.08
Pint "	.07	.06	.05
Half-pint "	*******	· manage	.03
8 quart cans	.55	calmates	.45
20 quart cans	annersa .		.90
40 quart cans	-	-	1.65
SKIM MILK		•	
Quart bottles	.09	Fernana	.07
8 quart cans		-	.35
20 quart cans			.70
40. quart cans		3	1.25

ARTICLE III MINIMUM SWEET CREAM PRICES

		Retail delivered by dealer to consumer	Retail over counter by store to consumer	Wholesale delivered	
EXTRA HEAVY CREAM	" :	- 1			
38% to 40% B. F.					
Quart bottles	*	\$.71	\$.66	\$.61	
Pint "		.39	.36	.32	
Half-pint "		.21	.19	.17	
HEAVY CREAM					
34% to 36% B.F					
Quart bottles		.65	.60	.55	
Pint "		.35	.32	.29	
Half-pint "		.19	.17	.15	
MEDIUM CREAM	0				
25% to 27% B.F.					
Quart bottles		54	.49	.44	
Pint "		.29	.26	.23	
Half-pint "		.16 .	.14	.12	
LIGHT CREAM					
18% to 20% B.F.					
Quart bottles		.40	.37	.33	
Pint "		.21	.19	.17	
Half-pint "		.13	.12	.10	
			4,		

SWEET CREAM IN 40, 20 AND 8 QUART CONTAINERS DELIVERED MILK MARKETING AREA NO. 17 (GREATER BOSTON MARKET)

-	38% to 40%	34% to 36%	30%	25% to 27%	18% to 20%	16%
40-qts.	\$17.50	\$15.50	\$13.50	\$11.50	\$9.50	\$7.75
20-qts.	9.00	8.00	7.25	6.25	5.50	4.50
8 qts.	4.00	3.50	3.20	2.60	2.10	1.85

MINIMUM SOUR CREAM PRICES

		Retail deliver by dealer to consumer		Wholesale delivered.
Pint bottles Half-pint bottles	1	\$.21	\$.20 .12	\$.17 .10

Sour Cream in 40, 20 and 8 Quart Containers Delivered Milk Marketing Area No. 17 (Greater Boston Market)

40 quarts	\$9.50
20 quarts	5.50
8 quarts	2.10

ARTICLE IV MINIMUM PRICES COVERING SALES TO INTER-MEDIATE DEALERS BY PASTEURIZING DEALER

(Prices f.o.b. pasteurizing dealer's platform)

MILK (MARKET) (1) When the pasteurizing dealer furnishes milk, bottles, caps, and cases the minimum price shall be 9¢ per quart bottle.

(2) When the pasteurizing dealer furnishes only milk, the minimum price shall be 81/2¢ per quart bottle.

(3) When the pasteurizing dealer furnishes milk, bot s, caps, and cases the minimum price snall be 6¢ per pint bottle and 3¢ per half-pint bottle.

(4) The minimum price for 8-quart cans of milk shall be 64¢ per can.

CREAM The minimum price for half-pint bottles of 18% to 20% cream and 34% to 36% cream shall be 2¢ per half-pint bottle below the applicable "wholesale delivered" price indicated under Article III.

ARTICLE V SCHEDULE RULINGS FOR AREA NO. 17

1. A minimum charge of 5¢ per bottle shall be made to and by stores purchasing milk and cream in glass bottles for resale, such bottles to be redeemed at the same figure.

2. A minimum charge of 3¢ per bottle shall be made to and by stores purchasing sour cream in glass bottles for resale, such bottles to be redeemed at the same figure.

3. An additional charge of 1¢ per unit shall be made over and above the applicable store price schedule set forth above in Article II and III, when milk and/or cream is delivered by a store to the consumer's residence.

4. An additional charge of 1¢ per container shall be made over and above the applicable price set forth above

in Articles II and III where milk and/or cream is sold at wholesale or retail in a paper container.

- 5. Sales of Vitamin "D" milk shall be made at the rate of at least 1¢ per quart above the applicable prices set forth above in Article II.
- 6. Sales of cream having a butterfat percentage not exceeding 40% shall be made only at or within the percentage or percentages specified above in Article III.
- 7. Sales of milk and cream shall be made only in the containers of the sizes and type specified above in Articles II and III.
- 8. Sales of milk and/or cream to welfare or relief recipients or agencies shall be made in accordance with the schedule of applicable prices as set forth above in Articles II and III.
- 9. Skimmed milk will not be bottled except by doctor's prescription.
- 10. No discounts, rebates or free samples shall be given by milk dealers except as provided for by these rulings.

This order shall become effective as herein above stated, to wit, July 1, 1937, at 12:01 A.M.

MILK CONTROL BOARD
Chairman
Administrator
Secretary
JOHN M. WHOULEY
Secretary

I hereby certify that I am the officer in charge of the minutes of the meetings of the Massachusetts Milk Control Board and further certify that the foregoing is a true copy of a portion of the minutes of the Meeting of the Massachusetts Milk-Control Board, held on June 23, 1937.

JOHN M. WHOULEY Secretary There personally appeared before me the above named, John M. Whouley, who made oath to the truth of the foregoing statement.

Boston, Mass. January 8, 1938. HERMAN M. BATES
Notary Public (Seal)

This is to certify that John M. Whouley was the Secretary of the Massachusetts Milk Control Board on June 23, 1937 and is such Secretary today.

J. C. Cort Administrator

THE COMMONWEALTH OF MASSACHUSETTS

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Office of the Secretary

Boston, Jan 8 - 1938

I hereby certify, That at the date of the attestation hereunto annexed, Joseph C. Cort was the Administrator, Milk Control Board, for and within this Commonwealth duly appointed and qualified and that to his acts and attestations, as such, full faith and credit are and ought to be given, in and out of Court; and further, that his signature to the annexed instrument is genuine.

In Testimony of Which, I have hereunto affixed the Great Seal of the Commonwealth the date first above written.

F. W. Cook

(Seal)

Secretary of the Commonwealth.

EXHIBIT 9.

MARKET ADMINISTRATOR
under the
Federal Milk Order
issued by the Secretary of Agriculture for the
GREATER BOSTON MARKETING AREA
ROOM 407 Post Office Building
Boston, Massachusetts

August 6, 1937

Gentlemen:

Your attention is called to Section 2 of Article III of the amended Order which became effective August 1, 1937, which reads as follows:

"Inter-Handler or Non-Handler Sales Milk, including skim milk, sold by a handler to another handler or to a person who is not a handler, and who distributes milk or manufactures milk products shall be presumed to be Class I milk. In the event that such selling handler, on or before the date fixed for filingreports pursuant to article V, notifies the Market Administrator that such milk, or a part thereof has been sold or used by such purchaser other than as Class I milk, such milk, or part thereof, shall be classified as Class II milk; provided, that if such selling handler does not, on or before the fifteenth day after the end of the delivery period during which such sale was made, furnish proof satisfactory to the Market Administrator in support of the above notification, such milk or part thereof shall then be classified as Class I milk and so included in the statement rendered to the selling handler pursuant to paragraph 3 of section 1 of article VIII."

In the case of sales of whole milk or skim milk to manufacturers of milk by-products who have no fluid milk distribution, an affidavit from the buyer, together with the right to examine his books and records, will be accepted by the Administrator as satisfactory proof of the use of such

milk. The same evidence will be accepted as satisfactory proof in the case of sales of skim milk only to other handlers.

Enclosed is a copy of an affidavit which is satisfactory for this purpose. Under separate cover we are sending you a small supply of these affidavit forms and can furnish—you with an additional supply upon your request. You will note that this form is designed to be attached to the invoice which is rendered to the buyer of the milk. The "Condition of Sale" statement at the top of the form is intended to protect the selling handler so that he can adjust his billing for the product if the buyer fails to furnish satisfactory proof of the use of the product as Class II milk.

In the case of sales of whole milk to milk distributors outside the Greater Boston Marketing Area or to handlers within the area who do not buy milk directly from producers, the presumption that the milk was used for fluid milk purposes is stronger and an affidavit by the buyer will not be accepted as satisfactory proof of the use of the milk. In such cases an audit of the buyer's records is required. If the buyer of such milk is a handler buying milk from producers in the Greater Boston Marketing Area, evidence as to the use of the milk will be found in the course of the regular audit of such handler's records by the Market Administrator. If the buyer is a milk dealer who does not buy milk from producers within the Greater Boston Marketing Area, whole milk sold to him will be con-, sidered as Class I milk unless a certificate signed by a certified public accountant regarding the use of the milk is provided to the Market Administrator. This certificate must contain the information outlined on the enclosed certificate form. These forms will also be provided upon request.

The Market Administrator, in accepting affidavits and certificates tentatively as satisfactory proof, reserves the right to examine the records of the purchaser to verify the statements contained in the affidavit or certificate. If such examination reveals a statement in an affidavit or certificate as being inaccurate, the selling handler will be held

responsible for accounting for the milk, according to the correct classification as determined by the Market Administrator's audit.

It should be noted that nothing contained herein applies to sales of whole milk to restaurants, bakeries, hotels, and the like. Such sales are definitely Class I milk, according to the terms of the Order.

If there is any point in connection with the furnishing of satisfactory proof in the case of inter-handler sales which is not clear, I should be glad to provide you with any further information which you may request.

Very truly yours,
Samuel W. Tator
Samuel W. Tator
Market Administrator

enclosures
Forms 11 and 12
P-2(S)

Form 11 Rev. (0-4)

CERTIFICATE OF USE OF MILK PURCHASES

This certificate must be submitted by the selling handler on or before the 15th day after the end of the delivery period in which the sale was made.

To the Market Administrator for the Greater Boston Marketing Area

Using the definitions of Class I milk and Class II milk contained in Federal Order No. 4, I certify that, to the best of my knowledge and belief, the total fluid milk handled by the above dealer in this period should be classified as follows:

		Pounds	2	% of Total
6	I milk II milk	,		
Total	milk handle	d		100.0%

> (Must be signed by Certified Public Accountant)

* Notice to Handler—This is the maximum percentage of your milk sold to the above dealer which can be accounted for as Class II milk, on the basis of this proof of use

CONDITION OF SALE

In order to be able to account to the Market Administrator for the Greater Boston Marketing Area for the milk sold to you at less than the Class I price, it is necessary to have the appended statement filled in and signed by you in duplicate and returned promptly to us. In the event that the Market Administrator requests, and you are unable to provide, satisfactory proof of the utilization of the milk as stated in this affidavit, we reserve the right to make an adjustment in the selling price in accordance with the classification of the milk by the Market Administrator.

AFFIDAVIT OF USE OF MILK PURCHASES

This affidavit must be submitted by the selling handler, on or before the 15th day after the end of the delivery period in which the sale was made

To the Market Administrator for the Greater Boston Marketing Area

My records may be examined to verify the above statements.

In witness	whe	ereof I h	ave hereunto set	my name	under
the penalties	of	perjury	thişday	of:	,
19					414
		· Giomat	nro	a chief.	

Signature.....

By......
(Individual authorized to sign)

EXHIBIT 9a.

MARKET ADMINISTRATOR

under the
Federal Milk Order
issued by the Secretary of Agriculture for the
GREATER BOSTON MARKETING AREA
Room 407 Post Office Building
Boston, Massachusetts

August 5, 1937

To Handlers in the Greater Boston Marketing Area who buy milk from Producers:

Enclosed is a copy of a Compilation of Order No. 4 Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area. This Compilation incorporates the amendments which became effective on August 1, 1937. This document contains the terms of the Order as it is now in effect, including the amendments.

In this letter we would like to point out certain important provisions of the amended order which will directly affect handlers buying milk from producers. The references mentioned will be found in the Compilation of the Order which is enclosed.

Please note in Article III, Section 1, Paragraph 1, that milk not specifically accounted for as Class II milk shall be Class I milk. This means that the handler must keep records which will clearly show the disposition of all milk purchased.

Under Section 2 of the same Article, all milk sold to other handlers is assumed to be Class I milk unless satisfactory proof is furnished to the Market Administrator that all, or any part of it, has been used as Class II milk by the purchasing handler.

In Article IV are set forth the minimum prices which handlers shall pay to producers or to associations of pro-

ducers.

In Article V it is provided that each handler shall submit his periodic report of receipts and sales of milk on or before the eighth day after the end of each delivery period. This Article also provides for reports of information in regard to producers from whom milk is purchased and a submission of records of the amount of money paid to producers. All reports of handlers are subject to verification through audit by the Market Administrator.

In Article VIII it is provided that each handler shall make payments to his producers on or before the twenty-fifth day after the end of each delivery period at prices not

less than those announced by the Administrator.

Paragraph 3 of Section 1 of the same Article provides for payments to or receipts from the Market Administrator in such amounts as will make each handler's cost for Class I milk and Class II milk equal to the prices specified in the Order.

In Article IX it is provided that a marketing service deduction not to exceed 2 cents per hundredweight shall be made by handlers from payments to producers who are not members of a qualified cooperative association, and paid to the Market Administrator on or before the twenty-fifth day after the end of each delivery period. Deductions which have been authorized by members of a qualified cooperative association are to be deducted from payments to such producers and paid to the association.

Under Article X an administration assessment not to exceed 2 cents per hundredweight of milk delivered by producers to the handler is to be paid to the Market Admin-

istrator on or before the twenty-fifth day after the end of each delivery period.

In advance of each report which is required from you under the terms of the Order, I will send you a form upon which to make the report, or a letter explaining in detail the information which is wanted. If you would like any information at this time as to how this amended order will apply to your business, we should be glad to have you call or write to this office.

Very truly yours,

SAMUEL W. TATOR
Samuel W. Tator

Market Administrator

P:1

EXHIBIT 9b.

MARKET ADMINISTRATOR

under the
Federal Milk Order
issued by the Secretary of Agriculture for the
GREATER BOSTON MARKETING AREA
Room 746, 80 Federal Street
Boston, Massachusetts

August 11, 1937

To Handlers of Milk in the Greater Beston Marketing Area:

Your attention is called to section 2 of Article III of the amended Order which became effective August 1, 1937, which reads as follows:

"Inter-Handler or Non-Handler Sales. Milk, including skim milk, sold by a handler to another handler or to a person who is not a handler and ho distributes milk or manufactures milk products shall be presumed to be Class I milk. In the event that such selling handler on or before the date fixed for filing reports pursuant to Article V, notifies the Market Ad-

ministrator that such milk, or a part thereof, has been sold or used by such purchaser other than as Class I milk, such milk, or part thereof, shall be classified as Class II milk; provided, that if such selling handler does not, on or before the fifteenth day after the end of the delivery period during which such sale was made, furnish proof satisfactory to the Market Administrator in support of the above notification, such milk or part thereof shall then be classified as Class I milk and so included in the statement rendered to the selling handler pursuant to paragraph 3 of section 1 of article VIII."

In the case of such sales of whole milk or skim milk, an affidavit from the buyer, together with the right to examine his books and records, will be accepted tentatively by the Administrator as satisfactory proof of the use of such milk. Enclosed is a copy of an affidavit which is suitable for this purpose. We can furnish you with a supply upon your request. You will note that this form is designed to be attached to the invoice which is rendered to the buyer of the milk. The "Condition of Sale" statement at the top of the form is intended to protect the selling handler so that he can adjust his billing for the product if the buyer fails to furnish satisfactory proof of the use of the product as Class II milk.

In the case of sales of whole milk to milk distributors who also buy milk from other sources, no larger percentage of the milk bought from Boston handlers will be classified as Class II milk than the percentage of the buyer's total milk which is in Class II, unless the buyer can prove beyond reasonable doubt the exact use of specific lots of milk.

The Market Administrator, in accepting affidavits tentatively as satisfactory proof, reserves the right to examine the records of the purchaser to verify the statements contained in the affidavit. If such examination reveals a statement in an affidavit as being inaccurate, the selling handler will be held responsible for accounting for the milk, ac-

cording to the correct classification as determined by the Market Administrator's audit.

It should be noted that nothing contained herein applies to sales of whole milk to restaurants, bakeries, hotels, and the like. Such sales are definitely Class I milk, according to the terms of the Order.

If there is any point in connection with the furnishing of satisfactory proof in the case of inter-handler sales which is not clear, I should be glad to provide you with any further information which you may request.

Very truly yours,

SAMUEL W. TATOR

Samuel W. Tator

Market Administrator

enc. Form 12 GL-2-R

EXHIBIT 9c.

MARKET ADMINISTRATOR
under the
Federal Milk Order
issued by the Secretary of Agriculture for the
GREATER BOSTON MARKETING AREA
Room 746, 80 Federal Street
Boston, Massachusetts

August 17, 1937

To Handlers of Milk in the Greater Boston Marketing Area:

Re: New Producers

Your attention is called to Article VIII, Section 1, paragraph 2 of the amended Order issued by the Secretary of Agriculture of the United States, regulating the handling of milk in the Greater Boston Marketing Area, a copy of which was sent you August 5.

This paragraph provides, in effect, that all new producers must be paid the Class II price applicable to the re-

spective plant to which deliveries were made, for all deliveries beginning with the first regular delivery and continuing through the two succeeding calendar months.

With respect to classification as between regular producers and new producers, the following interpretations

are to be applied:

(a) Any producer who regularly delivered milk to Boston market handlers from January 10, 1936 to

February 8, 1936 is a regular producer.

(b) Any producer who regularly delivered milk to Boston market handlers at some time after February 8, 1936, for a period continuing through the two full calendar months immediately succeeding a month in which regular milk deliveries began or resumed, is a regular producer.

(c) Any producer shipping from a farm from which deliveries were made, in accordance with paragraphs (a) and (b) above, is a regular producer.

(d) All other producers are new producers.

(e) If a new producer fails to make regular deliveries throughout the two and a fraction months, he is to be continually regarded as a new producer and paid the Class II price until he has made regular deliveries throughout a similar length of time beginning with a later date on which he may resume shipping.

Very truly yours,
SAMUEL W. TATOR
Samuel W. Tator
Market Administrator

L-5-R

EXHIBIT 10.

MARKET ADMINISTRATOR for the

GREATER BOSTON MARKETING AREA UNIFORM PRICES FOR 3.7 MILK, BY ZONES

August 1-15, 1937

Blended Price Class II Price per cwt. to per cwt. to Regular Producers New Producers

For milk delivered to plants located within 40 miles of the State House in Boston

\$2.643 \$1.598

For milk delivered to plants located more than 40 miles from the State House in Boston, as follows:

	100 111 10000	,			
Zone		Miles	9		
. 6		51-60		2.216	1.538
11		101-110		2.175	1.538
12		111-120		2.169	1.538
13		121-130		2.157	1:538
14		131-140		2.145	1.538
15		141-150		2.145	1.538
16		151-160	2	2.128	1.538
17		161-170		2.128	1.538
18		171-180		2.122	1.538
19		131-190		2.110	1.538
20		191-200		2.098	1.538
21	12/	201-210		2.098	1.538
22		211-220		2.087	1.538
23		221-230		2.081	1.538
24		231-240		2.075	1.538
. 25					1.538
26		241-250		2.075	
	*	251-260		2.063	1.538
27		261-270		2.057	1.538
28	*,	271-280		2.051	1.538
29		281-290		2.051	1.538
30		291-300		2.040	1.538

*Location Differentials—To the above prices to regular producers only are to be added the following amounts:

For milk from farms located within 40 miles of the State House in Boston..... 46¢ per cwt. For milk from farms located within 41-80 miles of the State House in Boston..... 23¢ per cwt.

	Brownson Dransparery To all producers
	PUTTERFAT DIFFERENTIAL—To all producers, for each 1/10 of 1% variation from 3.7% test\$.03
	Depuctions—From all the above prices, deductions are to
	be made as follows:
	From members of qualified associations
	(Art. IX—Sec. 2)Such deductions as ar
	authorized by member
	From non-members (Art. IX—Sec. 1)2¢ per cwt
	MARKET ADMINISTRATOR-GREATER BOSTON, MASSACHUSETTS
	MARKETING AREA
	EXTRACTS FROM THE COMPUTATIONS WHICH RESULTED IN TH
	Uniform Prices Announced for the August 1-15, 1937
	Period (Art. VII—Sec. 2—Par. 7)
	Art. VII—Sec. 2
	Par. 1 Total of the respective values of milk \$890,721.6
	2 Total net amount of the differentials
	applicable pursuant to Section 4 of
	Art. VIII 130,386.7
	\$1,021,108.4
	3 Total amount to be paid to producers pursuant to paragraph 2 of Sec-
	tion 1 of Art. VIII (New Pro-
2	ducers) 658.79
	\$1,020,449.60
	4 Total milk received
	from regular pro-
	ducers 40,767,840 lbs.
1	Blended price per cwt. \$2.503
	5 Deduction for the purpose of retain-
	ing a cash balance .04
	Basic blended price from which zone
	prices are calculated \$2.463
	Pounds of Milk
1	Total Receipts reported 40,810,671 2,720,711
	Net Class I Milk reported 22,917,482 1,527,832
	% Class I Milk to Total Receipts—56.16%
	Office of the Market Administrator
1	Room 746, 80 Federal Street, Boston, Mass.
	August 27, 1937

MARKET ADMINISTRATOR for the

GREATER BOSTON MARKETING AREA

UNIFORM PRICES FOR 3.7 MILK, BY ZONES August 16-31, 1937

Blended Price

per cwt. to Regular Producers For milk delivered to plants located . within 40 miles of the State House in Boston \$2.671 For milk delivered to plants located

more than 40 miles from the State.

House in Boston, as follows:

Zone	Miles		
6	51-60	2.244	1.587.
11	101-110	2.203	1.587
12	111-120	2.197	1.587
13	121-130	2.185	1.587
14	131-140	2.173	1.587
15	141-150	2.173	1.587
16	151-160	2.156	1.587
17	161-170	2.156	1.587
18	171-180	2.150	1.587
19	181-190	2.138	1.587
20	191-200	2.126	1.587
21	201-210	2.126	1.587
22	211-220	2.115	2 1.587
23	221-230	2.109	1.587
24	231-240	2.103	1.587
25	241-250	2.103	1.587
26	251-260	2.091	1.587
.27	261-270	2.085	1.587
-28	271-280	2.079	1.587
29	281-290	2.079	1.587
30	291-300	2.068	1.587

LOCATION DIFFERENTIALS—To the above prices to regular producers only are to be added the following amounts:

For milk from farms located within 40

miles of the State House in Boston 46¢ per cwt.

For milk from farms located within 41-80

miles of the State House in Boston 234 per cwt.

BUTTERFAT DIFFERENTIAL-To all producers, for each 1/10 of 1% variation from 3.7% test:.....\$.040

DEDUCTIONS—From all the above prices, deductions are to be made as follows: 'From members of qualified associations (Art. IX—Sec. 2)......Such deductions as are authorized by members · From non-members (Art. IX—Sec. 1):....2¢ per cwt. MARKET ADMINISTRATOR-GREATER BOSTON, MASSACHUSETTS, MARKETING AREA EXTRACTS FROM THE COMPUTATIONS WHICH RESULTED IN THE UNIFORM PRICES ANNOUNCED FOR THE AUGUST 16-31, 1937 Period (Art. VII-Sec. 2-Par. 7) Art. VII—Sec. 2 Par. 1 Total of the respective values of milk \$943,413.63 Total net amount of the differentials applicable pursuant to Section 4 of Art. VIII 135,052.94 \$1,078,466.57 Total amount to be paid to producers pursuant to paragraph 2 of Section 1 of Art. VIII (New Producers) -772.05\$1,077,694.52 Total milk received from regular pro-42,574,625 lbs. ducers Blended price per cwt. \$2.531 Deduction for the purpose of retaining a cash balance .04 Basic blended price from which zone prices are calculated \$2.491 Pounds of Milk
Total Daily Average Total Receipts reported 42,623,181 2,663,949 Net Class I Milk reported 24,21 % Class I Milk to Total Receipts—56:81% 24,214,758 1,513,422 Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. September 11, 1937

MARKET ADMINISTRATOR for the

GREATER BOSTON MARKETING AREA

UNIFORM PRICES FOR 3.7 MILK, BY ZONES

September 1-15, 1937

		Blended Price per cwt. to Regular Producers*	Class II Price per cwt. to New Producers
or milk del	ivered to plants loca	ted	
	niles of the State Ho		
in Boston		\$2.452	\$1.683
or milk del	ivered to plants loca		
	40 miles from the St		
	Boston, as follows:	. /	
Zone	Miles		
6	51-60	2.025	1.623
11 . /	101-110	1.984	1.623
12	111-120	. 1.978	1.623
13	121-130	1.966	1.623
14	131-140	1.954	1.623
15	141-150	1.954	1.623
16	151-160	1.937	1.623
17	161-170	1.937	1.623
18	171-180	1.931	1.623
19	181-190	1.919	1.623
20	191-200	1.907	1.623
21	201-210	1.907	1.623
22	211-220	1.896	1.523
23	221-230	1.890	_1.623
24	231-240	1.884	1.623
25	241-250	1.884	1.623
26	251-260	1.872	1.623
27	261-270	1.866	1.623
28	271-280	1.860	1.623
29	281-290	1.860	1.623
30	291-300	1.849	1.623
producers	OIFFERENTIALS—To the only are to be added	he above prices the following a	to regular

For milk from farms located within 40 miles of the State House in Boston 46¢ per cwt. For milk from farms located within 41-80 miles of the State House in Boston.....23¢ per cwt.

BUTTERFAT DIFFERENTIAL—To all producers, for each 1/10 of 1% variation from 3.7% test.....\$.041

DEDUCTIONS—From all the above prices, deductions are to be made as follows: From members of qualified associations (Art. IX—Sec. 2)Such deductions as are authorized by members
From non-members (Art. IX—Sec. 1)2¢ per cwt.
MARKET ADMINISTRATOR—GREATER BOSTON, MASSACHUSETTS, MARKETING AREA
EXTRACTS FROM THE COMPUTATIONS WHICH RESULTED IN THE
Uniform Prices Announced for the September 1-15, 1937
Period (Art. VII—Sec. 2—Par. 7) Art. VII—Sec. 2
Par. 1 Total of the respective values of milk \$377,629.23 2 Total net amount of the differentials applicable pursuant to Section 4 of
Art. VIII 60,668.15
\$438,297.38
3 Total amount to be paid to producers pursuant to paragraph 2 of Sec- tion 1 of Art. VIII (New Pro- ducers) 479.46
\$427 Q17 QQ
4 Total milk received from regular producers 18,938,804 lbs.
Blended price per cwt. \$2.312 5 Deduction for the purpose of retaining a cash balance .04
Basic blended price from which zone prices are calculated \$2.272
Pounds of Milk
Total Receipts reported 18,968,244 1,264,550
Net Class I Milk reported 6,347,588 423,173 % Class I Milk to Total Receipts—33.46%
Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. September 28, 1937

1.638

1.638

1.638

1.638

1.638

1.638

1.638

MARKET ADMINISTRATOR for the

GREATER BOSTON MARKETING AREA

Uniform Prices for 3.7 Milk, by Zones September 16-30, 1937

For milk delivered to plants located

24

25

26

27

28

29

30

Blended Price per cwt. to Regular Producers*

1.867

1.867

1.855

1.849

1.843

1.843

1.832

within 40 mi	les of the State Hous	e	
in Boston		\$2.435	\$1.698
Action to the second	ered to plants locate		/:
	0 miles from the Stat		•,
	ston, as follows:		
Zone	Miles		7 .
6	51-60	2.008	1.638
11	101-110	1.967	1.638
12	111-120	1.961	1.638
13	121-130	1.949	1.638
14	131-140	1.937	1.638
15	141-150	1.937	1.638
. 16	151-160	1.920	1.638
17	161-170	1.920	1.638
18	171-180	1.914	1.638
19	181-190	1.902	1.638
20	191-200	1.890	1.638
21	201-210	1.890	1.638
22 23	211-220	1.879	1.638
23	221-230	1.873	1.638

*Location Differentials—To the above prices to regular producers only are to be added the following amounts:

231-240

241-250

251-260

261 - 270

271 - 280

281-290

291-300

For milk from farms located within 40 miles of the State House in Boston.....46¢ per cwt. For milk from farms located within 41-80

miles of the State House in Boston.....23¢ per cwt.

Butterfat Differential—To all producers, for each 1/10 of 1% variation from 3.7% test.....\$.041

DEDUCTIONS—From all the above prices, deduce be made as follows:	tions are to
From members of qualified associations (Art. IX—Sec. 2)Such deduct authorized	by members
From non-members (Art. IX—Sec. 1)	.2¢ per cwt.
MARKET ADMINISTRATOR—GREATER BOSTON, MASS MARKETING AREA	SACHUSETTS,
EXTRACTS FROM THE COMPUTATIONS WHICH RESU	LTED IN THE
Uniform Prices Announced for the September	
Period (Art. VII—Sec. 2—Par. 7)	
Art. VII—Sec. 2	3
Par. 1 Total of the respective values of milk 2 Total net amount of the differentials applicable pursuant to Section 4 of	\$368,731.06
Art. VIII	60,668.99
	\$429,400.05
3 Total amount to be paid to producers pursuant to paragraph 2 of Sec- tion 1 of Art. VIII (New Pro-	
ducers)	737.34
	\$428,612.71
· 4 Total milk received	
from regular producers 18,677,477 lbs.	
Blended price per cwt. 5 Deduction for the purpose of retain-	\$2.295
ing a cash balance	.04-
Basic blended price from which zone prices are calculated	\$2.255
Pound	la of Milk
Total	Daily Average
Total Receipts reported 18,725,213 Net Class I Milk reported 5,646,952 % Class I Milk to Total Receipts—30.16%	1,248,348 376,463
Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass.	
October 11, 1937	

Class II Price

MARKET ADMINISTRATOR

for the

GREATER BOSTON MARKETING AREA UNIFORM PRICES FOR 3.7 MILK, BY ZONES

October 1-15, 1937

For milk delivered to plants located within 40 miles of the State House in Boston \$2.422 \$1.646

For milk delivered to plants located

. more than 40 miles from the State House in Boston, as follows:

 Zone	Miles	*		,
6	51-60	* * * * *	1.995	1.586
10	91-100	•	1.960	1.586
11	101-110		1.954	1.586
12	111-120	* -	1.948	1.586
13	121-130		1.936	1.586
14	131-140		1.924	1.586
15	141-150		1.924	1.586
16	151-160		1.907	1.586
17	161-170		1.907	1.586
18	171-180	•	1.901	1.586
19	181-190	* .	1.889	1.586
20	191-200		1.877	1.586
21	201-210		1.877	1.586
22	211-220	4	1.866	1.586
23	221-230		1.860	1.586
24	231-240		1.854	1.586
25	241-250		1.854	1.586
26	251-260		1.842	1.586
27	261-270		1.836	1.586
28	271-280		1.830	1.586
29	281-290		1.830	1.586
30	291-300		1.819	1.586

Location Differentials—To the above prices to regular producers only are to be added the following amounts:

Butterfat Differential—To all producers, for each 1/10 of 1% variation from 3.7% test	\$:04
DEDUCTIONS—From all the above prices, deduct be made as follows: From members of qualified associations (Art. IX—Sec. 2)	tions as are
MARKET ADMINISTRATOR—GREATER BOSTON, MASS MARKETING AREA	SACHUSETTS,
EXTRACTS FROM THE COMPUTATIONS WHICH RESULT UNIFORM PRICES ANNOUNCED FOR THE OCTOBER PERIOD (Art. VII—Sec. 2—Par. 7) Art. VII—Sec. 2	
Par. 1 Total of the respective values of milk 2 Total net amount of the differentials applicable pursuant to Section 4 of Art. VIII	\$342,700.13 57,252.41
3 Total amount to be paid to producers pursuant to paragraph 2 of Section 1 of Art. VIII (New Producers)	\$399,952.54 396.37
4 Total milk received from regular pro- ducers 17,510,183 lbs.	\$399,556.17
Blended price per cwt. 5 Deduction for the purpose of retaining a cash balance	\$2.282
Basic blended price from which zone prices are calculated	\$2.242
Total Receipts reported 17,535,175	Daily Average 1,169,012
Net Class I Milk reported 5,702,205 % Class I Milk to Total Receipts—32.52%	380;147

Class II Price

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. October 27, 1937

For milk delivered to plants located

291-300

30

MARKET ADMINISTRATOR for the

GREATER BOSTON MARKETING AREA

Uniform Prices for 3.7 Milk, by Zones October 16-31, 1937

Blended Price

per cwt. to Regular Producers*

1.980

1.616

	s of the State House		
in Boston		\$2.583	\$1.676
For milk deliver	red to plants located		
more than 40	miles from the State		
House in Bost	en, as follows:		
Zone	Miles		
6	51-60	2.156	1.616
10 .	91-100	2.121	1.616
11	101-110	2.115	1.616
12	111-120	2.109	1.616
13	121-130	2.097	1.616
14	131-140	2.085	1.616
15	141-150	2.085	1.616
16	151-160	2.068	1.616
17	161-170	2.068	1.616
18	171-180	2.062	1.616
19	181-190	2.050	1.616
20	191-200	2.038	1.616
21 -	201-210	2.038	1.616
22	211-220	2.027	1.616
23	221-230	2.021	1.616
24	231-240	2.015	1.616
25	241-250	2,015	1.616
26	251-260	2.003	1.616
27	261-270	1.997	1.616
28	271-280	1.991	1.616
29	281-290	1.991	1.616

*Location Differentials—To the above prices to regular producers only are to be added the following amounts:

	· · · · · · · · · · · · · · · · · · ·
For milk from farms located within 40 miles of the State House in Boston For milk from farms located within 41-80 miles of the State House in Boston	
Butterfat Differential—To all producers, for each 1/10 of 1% variation from 3.7% test	\$.041
DEDUCTIONS—From all the above prices, deduce be made as follows: From members of qualified associations (Art. IX—Sec. 2)	etions as are by members
MARKET ADMINISTRATOR—GREATER BOSTON, MASS MARKETING AREA	SACHUSETTS,
F	
EXTRACTS FROM THE COMPUTATIONS WHICH RESU	
Uniform Prices Announced for the October	10-31, 1931
Period (Art. VII—Sec. 2—Par. 7)	
Art. VII—Sec. 2	
Par. 1 Total of the respective values of milk 2 Total net amount of the differentials applicable pursuant to Section 4 of Art. VIII	\$327,992.79 52,603.56
	\$380,596.35
3 Total amount to be paid to producers pursuant to paragraph 2 of Sec- tion 1 of Art. VIII (New Pro-	\$550,550.50
ducers)	472.38
	\$380,123.97
from regular pro- ducers 15,792,464 lbs.	
Blended price per cwt. Deduction for the purpose of retaining a cash balance	\$2.407
	\$2.367

	**
6 Addition for the purpose of distrib- uting cash balance available	.036
Basic blended price from which zone prices are calculated	\$2.403
Pounds	of Milk
Total	Daily Average
Total Receipts reported 15,821,612	.988,851
Net Class I Milk reported 6,765,991	422,874
% Class I Milk to Total Receipts—42.76%	1
Office of the Market Administrator	16
Room 746, 80 Federal Street, Boston, Mass.	
November 12, 1937	
November 12, 1937	
MARKET ADMINISTRATOR	
for the	
GREATER BOSTON MARKETING AREA	
GREATER DOSTON MARKETING AREA	
Uniform Prices for 3.7 Milk, by Zoni	88
November 1-15, 1937	
Blended Price per cwt. to Regular Producers*	Class II Price per cwt. to New Producers
For milk delivered to plants located	item a rouncers
within 40 miles of the State House	
in Boston \$2.782	\$1.746
For milk delivered to plants located	42
more than 40 miles from the State	
House in Boston, as follows:	
Zone Miles	
6 51-60 2.355	1.686
10 91-100 2.330	1.686
11 101-110 2.314	1.686
12 111-120 2.308	1.686
13 121-130 2.296	1.686
14 131-140 2.284	1.686
15 141-150 2.284	1.686
16 151-160 2.267	1.686
17 161-170 2.267	1.686
18 171-180 2.261	1.686
19 181-190 2.249	1.686
20 191-200 2.237	1.686
21 201-210 2.237	1.686
22 211-220 2.226	1.686

Exhibits

TTT.	LIAU	ioito .	
23	221-230	2.220	1.686
24	231-240	2.214	1.686
25	241-250	2.214	1.686
26	251-260	2.202	1.686
27	261-270	2.196	1.686
28	271-280	2.190	1.686
29	281-290	2.190	1.686
30	291-300	2.179	1.686
For milk miles o For milk	only are to be add from farms loof the State Hous from farms loca	the above price ded the following cated within 40 se in Boston4 ated within 41-80 se in Boston	amounts: 0.8¢ per cwt.
		o all producers, on from 3.7% tes	t\$.043
be made as From me (Art. I	follows: embers of quality X—Sec. 2)		ctions as are
MARKET ADM	INISTRATOR—GREATING	ATER BOSTON, MAR	SSACHUSETTS,
EXTRACTS FRO	M THE COMPUTAT	TIONS WHICH REST	LTED IN THE
		FOR THE NOVEMBE	
		—Sec. 2—Par. 7)	1-10, 100
Art. VII-See	. 2		
2 Tot	tal net amount of pplicable pursua	ve values of milk the differentials ant to Section 4 of	
	Art. VIII		41,747.68
			\$331,810.14
- 3 Tot	al amount to be	paid to producers	
p	ursuant to para	graph 2 of Sec-	
t	ion 1 of Art. Y	VIII (New Pro-	,
	lucers)	• • •	459.22

\$331,350.92

Exhibits

.4	Total milk received from regular pro- ducers 12,759,511 lbs.	
5	Blended price per cwt. Deduction for the purpose of retaining a cash balance	\$2.597
6	Addition for the purpose of distributing cash balance available	\$2.557 .045
0	Basic blended price from which zone prices are calculated	\$2.602
	Pounds	f Milk

Dally Average Total Receipts reported . 12,786 Net Class I Milk reported 7,570 % Class I Milk to Total Receipts—59.21% 12,786,666. 852,444 7,570,563 504,704

Total

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. November 27, 1937

MARKET ADMINISTRATOR

for the

GREATER BOSTON MARKETING AREA UNIFORM PRICES FOR 3.7 MILK, BY ZONES

November 16-30, 1937

	1.					ended Price per cwt. to ar Produce:		lass II Taice per cwt. to w Producers
For mil	k deli	vered	to pla	nts loca	ted		* -	
withi	n 40 m	iles o	f the S	tate Ho	use			
in Bo		'.		1 1		\$2.836		\$1.851
For mil	k deli	vered	to pla	nts loca	ted			
				n the St				1
Hous	e in B	oston	, as fol	lows:			W. 4	
Zone.			Miles					1,000
. 6			51-60			9		1.791
10			91-100			2.374		1.791

14	131-140		2.338	1.791
15	141-150	. '0	2.338	1.791
. 16	151-160		2.321	1.791
17	161-170		2.321	1.791
18	171-180		2.315	1.791
.19	181-190	*	2.303	1.791
20	191-200		2.291	1.791
21	201-210		2.291	-1.791
22	211-220	41	2.280	1.791
23	221-230		2.274	1.791
24	231-240		2.268	
		*		1.791
25	241-250		2.268	1.791
26	251-260	. 1	2.256	1.791
. 27	261-270		2.250	1.791
28	. 271-280		2.244	1.791
29	281-290		2.244	1.791
30	291-300	1	2.233	1.791
miles of t For milk fr	y are to be ad rom farms lo he State Hous om farms locate State House	ded the focated wise in Bos	ollowing am ithin 40 ton35.4¢ in 41-80	per cwt
BUTTERFAT DIFF	ferential—To of 1% variati	on from	oducers, 3.7% test	\$.046
	**		,	

DEDUCTIONS-From all of the above prices, deductions are to

From non-members (Art. IX—Sec. 1).....2¢ per ewt.

From members of qualified associations

be made as follows:

(Art. IX-Sec. 2)...

Exhibits

2.368

2.362

2.350

..... Such deductions as are

authorized by members

1.791.

1.791

1.791

101-110

111-120

116

11.

12

13

MARKET ADMINISTRATOR—GREATER BOSTON, MASSACHUSETTS, MARKETING AREA

EXTRACTS FROM THE COMPUTATIONS WHICH RESULTED IN THE UNIFORM PRICES ANNOUNCED FOR THE NOVEMBER 16-30, 1937
PERIOD (Art. VII—Sec. 2—Par. 7)

4 4	TETT	r 0	.0
A 20 P	V/	Sec.	.,

,	200	- 21
Par. 1	Total of the respective values of milk Total net amount of the differentials applicable pursuant to Section 4 of Art. VIII	\$287,973.27 40,407.12
		\$328,380.39
. 3	Total amount to be paid to producers pursuant to paragraph 2 of Section 1 of Art. VIII (New Producers)	519.02
		\$327,861.37
4	Total milk received from regular pro- ducers 12,389,066 lbs.	
5	Blended price per cwt. Deduction for the purpose of retaining a cash balance	\$2.646
	at the state of th	\$2.600
6	Addition for the purpose of distrib-	\$2.000
	uting cash balance available	.05
	Basic blended price from which zone prices are calculated	\$2.656
	Pound Total	ls of Mük Daily Average

12,417,965

7,484,730

827,864

498,982

% Class I Milk to Total Receipts—60.27%

Office of the Market Administrator
Room 746, 80 Federal Street, Boston, Mass.

Total Receipts reported

December 11, 1937

Net Class I Milk reported

MARKET ADMINISTRATOR

for the

GREATER BOSTON MARKETING AREA

UNIFORM PRICES FOR 3.7 MILE, BY ZONES

December 1-15, 1937

Blended Price

	per cwt. to Regular Producers*	per cwt. to New Producers
For milk delivered to plan		
within 40 miles of the Stat	e House:	
in Boston	\$2.817	\$1.905
For milk delivered to plants		
more than 40 miles from t	he State	
House in Boston, as follow		
Zone Miles		
6 . 51-60	2.390	1.845
10 91-100	2.355	1.845
11 101-110	2.349	1.845
- 12 111-120	2.343	1.845
13 121-130	2.331	1.845
14 131-140	2.319	1.845
15 . 141-150	2.319	1.845
16 151-160	2.302	1.845
17 161-170	2.302	1.845
18' 171-180	2.296	1.845
19 181-190	2.284	1.845
20 191-200	2.272	1.845
21	2.272	1.845
22 211-220	2.261	1.845
23 221-230	2.255	1.845
24 231-240	2.249	1.845
25 241-250	2.249	1.845
26 251-260	2.237	1.845
27 261-270	2.231	1.845
28 271-280	2.225	1.845
29 281-290	2.225	1.845
30 291-300	2.214	1.845

LOCATION DIFFERENTIALS—To the above prices to regular producers only are to be added the following amounts:

For milk from farms located within 40 miles of the State House in Boston... 37.3¢ per cwt. For milk from farms located within 41-80 miles of the State House in Boston.... 23¢ per cwt.

Butterfat Differential—To all producers, for each 1/10 of 1% variation from 3.7% test\$.048	
DEDUCTIONS—From all the above prices, deductions are to be made as follows: From members of qualified associations (Art. IX—Sec. 2)	
MARKET ADMINISTRATOR—GREATER BOSTON, MASSACHUSETTS, MARKETING AREA	
EXTRACTS FROM THE COMPUTATIONS WHICH RESULTED IN THE	
Uniform Prices Announced for the December 1-15, 1937	
Period (Art. VII—Sec. 2—Par. 7)	
	1
Art. VII—Sec. 2	
Par. 1 Total of the respective values/of milk \$295,503.47 Total net amount of the differentials	
applicable pursuant to Section 4 of Art. VIII 41,630.35	1
\$337,133.82	
3 Total amount to be paid to producers	
pursuant to paragraph 2 of Sec-	
tion 1 of Art. VIII (New Producers) 817.92)
A222 215 00	
\$336,315.90	
4 Total milk received from regular pro-	*
ducers 12,839,837 lbs.	
Blended price per cwt. \$2.619	
5 Deduction for the purpose of retain-	
ing a cash balance .04	4
\$2.579	
6 Addition for the purpose of distrib-	
uting cash balance available .058	
Basic blended price from which zone	
prices are calculated \$2.637	

		of Milk
	Total	Daily Average
Total Receipts reported	12,883,936	858,929
Net Class I Milk reported	6,910,531	460,702
% Class I milk to Total Receipts-	-53.64%	

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. December 27, 1937

MARKET ADMINISTRATOR

for the

GREATER BOSTON MARKETING AREA UNIFORM PRICES FOR 3.7 MILK, BY ZONES

December 16-31, 1937

	Blended Price per cwt. to Regular Producers* Class II per cwt Per cwt.	to ·
For milk delivered to play within 40 miles of the S	ants located State House	
in Boston	\$2.68 \$1.76	37
For milk delivered to pla more than 40 miles fro House in Boston, as fo	ints located in the State	1
Zone Miles	nows.	,
6 51-60	. 2.253 1.70	7
10 91-100		
11 101-110		
12 111-120		
13 121-130		
14 131-140		
15 141-150		
16 151-160		7
17 161-170		7
18 171-180	2.159 1.70	7
19 • 181-190	2.147 · 1.70	7
20 191-200	2.135 1.70	7
21 201-210	2.135 1.70	7
22 . 211-220	2.124 1.70	7
23 221-230	2.118 1.70	7
24 231-240	. 2.112 1.70	7
25 241-250	2.112 1.70	7
26 251-260	2.100 1.70	7

T-3			. 1
Ex	hı	h	to
مبد	ш	N/A	ug

27		261-270		2.094	1.707
28		271-280	/ .	2.088	1.707
29		281-290	.7	2.088	1.707
30	*	291-300		2.077	1.707

*Location Differentials—To the above prices to regular producers only are to be added the following amounts:

For milk from farms located within 40 miles of the State House in Boston 46¢ per cwt.

For milk from farms located within 41-80

miles of the State House in Boston 23¢ per cwt.

BUTTERFAT DIFFERENTIAL-To all producers. for each 1/10 of 1% variation from 3,7% test. . \$.045

Deductions—From all the above prices deductions are to be made as follows:

From members of qualified associations

(Art. IX—Sec. 2).....Such deductions as are authorized by members

From non-members (Art. IX—Sec. 1).....2¢ per cwt.

MARKET ADMINISTRATOR-GREATER BOSTON, MASSACHUSETTS. MARKETING AREA

EXTRACTS FROM THE COMPUTATIONS WHICH RESULTED IN THE UNIFORM PRICES ANNOUNCED FOR THE DECEMBER 16-31, 1937 Period (Art. VII—Sec. 2—Par. 7)

Art. VII—Sec. 2

Par. 1 Total of the respective values of milk \$311,323.57

Total net amount of the differentials applicable pursuant to Section 4 of Art. VIII

45,376,37

\$356,699.94

Total amount to be paid to producers pursuant to paragraph 2 of Section 1 of Art. VIII (New Producers)

1,300.77

\$355,399.17

Total milk received from regular producers

14,206,552 lbs.

Exhibits

\$2.502

5	Deduction for the pu ing a cash balance	rpose of retain-	.04
			\$2.462
6	Addition for the pur	pose of distrib-	
•	uting cash balance	available	.038
	Basic blended price in prices are calculated		\$2.500
*		Pounds Total	of Milk Daily Average
Total Pos	eipts reported	14,282,368	892,648
Net Class	I Milk reported	6,887,403	430,463
% Class 1	Milk to Total Receip	ts-48.22%	

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. January 12, 1938

Blended price per cwt.

MARKET ADMINISTRATOR

for the

GREATER BOSTON MARKETING AREA UNIFORM PRICES FOR 3.7 MILK, BY ZONES

January 1-15, 1938

		Blended Price per cwt. to Regular Producers	Class II Price per cwt. to New Producers
	livered to plants locat		
	miles of the State Hou		41 550
in Boston		\$2.577	\$1.558
For milk de	livered to plants locat	ted	7
	40 miles from the St		:
	Boston, as follows:		
Zone	Miles		
.6	51-60	2.150	1.498
10	91-100	2.115	1.498
11	101-110	2.109 -	1.498
12	111-120	2.103	1.498
13	121-130	2.091	1.498
14	131-140	2.079	1.498

15		141-150	2.079	1.498
16	1	151-160	 2.062	1.498
17		161-170	2.062	1.498
18		171-180	 2.056	1.498
19	1	181-190	2.044	1.498
20	1 1	191-200	 2.032	1.498
21	1.1	201-210	2.032	1.498 .
22		211-220	2:021	1.498
23		221-230	2.015	1.498
24		231-240	2.009	1.498
25		241-250	2.009	1.498
26	5.	251-260	1.997	1.498
27	1	261-270	1.991	1.498
28		271-280	1.985	1.498
29		281-290	 1.985	1.498
30		291-300	 1.974	1.498

*Location Differentials—To the above prices to regular producers only are to be added the following amounts:

For milk from farms located within 40 miles of the State House in Boston.....46¢ per cwt. For milk from farms located within 41-80 miles of the State House in Boston.....23¢ per cwt.

BUTTERFAT DIFFERENTIAL—To all producers, for each 1/10 of 1% variation from 3.7% test.....\$0.39

DEDUCTIONS—From all the above prices, deductions are to be made as follows:

From non-members (Art. IX—Sec. 1).....2¢ per cwt.

MARKET ADMINISTRATOR-GREATER BOSTON, MASSACHUSETTS. MARKETING AREA

EXTRACTS FROM THE COMPUTATIONS WHICH RESULTED IN THE UNIFORM PRICES ANNOUNCED FOR THE JANUARY 1-15, 1938 Period (Art. VII-Sec. 2-Par. 7)

	1 miob (111 to 111 both 2. 1 al. 1)	
Art. VII-	-Sec. 2	
Par. 1	Total of the respective values of milk Total net amount of the differentials applicable pursuant to Section 4 of Art. VIII	\$279,717.49 43,458.50
, ,		\$323,175.99
3	Total amount to be paid to producers pursuant to paragraph 2 of Sec-	ф020,110.33
	tion 1 of Art. VIII (New Producers)	1,169.72
		\$322,006.27
4	Total milk received from regular pro- ducers 13,514,897 lbs.	•
	Blended price per cwt.	\$2.383
5	Deduction for the purpose of retain- ing a cash balance	,04
		\$2.343
6	Addition for the purpose of distrib-	

6	Addition for the purpose of distrib-	
	uting cash balance available	.054
	Basic blended price from which zone	
	prices are calculated	\$2.397

Total Receipts reported 13,592,634 906,176 Net Class I Milk reported 426,298 6,394,471 % Class I Milk to Total Receipts 47.04%

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. January 27, 1938

\$1.515

MARKET ADMINISTRATOR for the

GREATER BOSTON MARKETING AREA

UNIFORM PRICES FOR 3.7 MILK, BY ZONES January 16-31, 1938

For milk delivered to plants located within 40 miles of the State House

in Boston

per cwt. to Regular Producers*

\$2.546

	ered to plants miles from th		
House in Bo	ston, as follow	s:	
Zone	Miles		
.6	51 ₅ 60	2.119	1.455
10	91-100	2.084	1.455
11	101-110	2.078	1.455
1.	111-120	2.072	1.455
13	121-130	2.060	1.455
14	131-140	2.048	1.455
/ 15	141-150	2.048	1.455
16	151-160	2.031	1.455
17	161-170	2.031	1.455
18	171-180	2.025	1.455
19	181-190	2.013	1.455
20	191-200	2.001	1.455
21	201-210	2.001	1.455
22	211-220	1.990	1.455
23	221-230	1.984	1.455
24	231-240	1.978	1.455
25	241-250	1.978	1.455
26	251-260	1.966	1.455
27	261-270	1.960	1.455
28	271-280	1.954	1.455
29	281-290	1.954	1.455
30	291-300	1.943	1.455

Location DIFFERENTIALS—To the above prices to regular producers only are to be added the following amounts:

miles of the State House in Boston 46¢ per cwt.

miles of the State House in Boston. 23¢ per cwt.

For milk from farms located within 40

For milk from farms located within 41-80

Exhibits

BUTTERFAT DIFFERENTIAL—To all producers, for each 1/10 of 1% variation from 3.7% test	\$.038
DEDUCTIONS—From all the above prices, deductions be made as follows: From members of qualified associations (Art. IX—Sec. 2)	etions as are by members
MARKET ADMINISTRATOR—GREATER BOSTON, MAS MARKETING AREA	SACHUSETTS,
EXTRACTS FROM THE COMPUTATIONS WHICH RESU	LTED IN THE
Uniform Prices Announced for the January	
Period (Art. VII—Sec. 2—Par. 7)	
Art. VII—Sec. 2	4.
	4900 500 96
Par. 1 Total of the respective values of milk 2 Total net amount of the differentials	\$298,509.50
applicable pursuant to Section 4 of	
Art. VIII	46,717.49
/.	\$345,226.85
3 Total amount to be paid to producers pursuant to paragraph 2 of Section 1 of Art. VIII (New Producers)	
	\$343,854.00
4 Total milk received from regular pro- ducers 14,543,552 lbs.	
Blended price per cwt.	\$2.364
5 Deduction for the purpose of retain- ing a cash balance	.04
	\$2.324
6 Addition for the purpose of distrib- uting cash balance available	.042
Basic blended price from which zone prices are calculated	\$2.366

Class II Price

\$1.433

Exhibits

Total Receipts reported 14,637,193 914,825
Net Class I Milk reported 6,966,617 435,414
% Class I Milk to Total Receipts—47.60%

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. February 12, 1938

For milk delivered to plants located within 40 miles of the State House

For milk delivered to plants located

in Boston

MARKET ADMINISTRATOR

for the

GREATER BOSTON MARKETING AREA

Uniform Prices for 3.7 Milk, by Zones

February 1-15, 1938

Blended Price

per cwt. to Regular Producers

\$2.490

	40 miles from the State		
House in	Boston, as follows:		
Zone	Miles	1	
6	51-60	2.063	1.373
10	91-100	2.028	1.373
11	101-110	2.022	1.373
12	111-120	2.016	1.373
13	121-130	2.004	1.373
14	131-140	1.992	1.373
15	141-150	1.992	1.373
16	151-160	1.975	1.373
17	161-170	1.975	1.373
18	171-180	1.969	1.373
19	181-190	1.957	1.373
20	191-200	1.945	1.373
2r*	201-210	1.945	1.373
22	211-220	1.934	. 1.373
23	221-230	1.928	1.373
24	231-240	1.922	1.373
25	241-250	1.922	1.373
26	251-260	1.910	1.373

				5
27	261-270		1.904	1.373
28	271-280		1.898	1.373
29	281-290		1.898	1.373
30	291-300		1.887	1.373
For milk fro	are to be add	ed the folcated wite in Bosto ted within	llowing a thin 40 on n 41-80	mounts: 46¢ per cwt.
	, , , , ,			-of ber cum
BUTTERFAT DIFF	ERENTIAL-TO	all pro	ducers,	
for each 1/10	of 1% variation	on from 3	3.7% test	\$.036
DEDUCTIONS—Free		ove price	s, deduc	tions are to
From memb	ers of qualif	ied assoc	iations	
	-Sec. 2)			tions as are
				by members
From non m	embers (Art.	IV Soo	1)	24 non owt
F TOM HOD-III	embers (Art.	IA—Sec.	1)	. 2¢ per cwi.
MARKET ADMINIS	TRATOR-GREA	TER BOST	on, Mas	SACHUSETTS,
/ · ; · .	MARKETI		. '	
			•	
EXTRACTS FROM T	HE COMPUTAT	ions whi	CH RESU	LTED IN THE
UNIFORM PRICES	ANNOUNCED	FOR THE I	EBRUARY	1-15, 1938
Peri	op (Art. VII-	_Sec. 2_	Par. 7)	
	10			
Art. VII—Sec. 2				
Par. 1 Total	of the respecti	vo values	of milk	\$284,465.63
	net amount of			φ201,100.00
	licable pursua	nt to Sect	non 4 or	45 405.04
Art.	VIII		1	45,437.24
				\$329,902.87
3 Total	amount to be	paid to pr	oducers	
pur	suant to para	graph 2	of Sec-	* .
tion	1 of Art. V	VIII (Ne	w Pro-	
	ers)	, (210	110	1,171.19
duce	10).			1,111.15
	4 1		1 1	\$328,731.68
				Φ320,131.00

445,018

4	Total milk received from regular pro- ducers 14,239,895 lbs.	
	Blended price per cwt.	\$2.309
5		.04
		\$2.269
6	Addition for the purpose of distrib- uting cash balance available	.041
	Basic blended price from which zone prices are calculated	\$2.310
10 1	Pounds Total	of Milk Daily Average
Total Re	ceipts reported 14,324,441	954,963

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. February 26, 1938

% Class I Milk to Total Receipts-46.6%

Net Class I Milk reported

MARKET ADMINISTRATOR

for the

GREATER BOSTON MARKETING AREA

UNIFORM PRICES FOR 3.7 MILK, BY ZONES February 16-28, 1938

For milk delivered to plants located

Blended Price Class II Price per cwt. to per cwt. to New Producers

\$2,403

\$1.351

6,675,267

For milk delivered to plants located more than 40 miles from the State House in Boston, as follows:

within 40 miles of the State House

Zone	-	Miles	4		
61		51-60	1	1.976	1.291
10		~91-100	1	1.941	1.291
11		101-110	1.	1.935	1.291
12		111-120		1.929	1.291

400		
130	Exhibits	The same of the sa
		0
13	121-130	1.917 .1.291
14	131-140	1.905 1.291
15 .	141-150	1.905 1.291
16	151-160	1.888 . 1.291
17	161-170	1.888 1.291
18	171-180	1.882 1.291
19	181-190	1.870 1.291
20	191-200	1.858 1.291
21	201-210	1.858 1.291
22	211-220.	1.847 1.291
23	221-230	1.841 1.291
24	231-240	1.835 1.291
25	241-250	1.835 1.291
26	251-260	1.823 1.291
27	261-270	1.817 1.291
. 28	271-280	1.811 1.291
29	281-290	1.811 \ 1.291
30/	291 300	1.800 1.291
	S	
		above prices to regular
	only are to be added the	
	k from farms located	
miles	of the State House in .	Boston 46¢ per cwt.
	k from farms located	
miles	of the State House in	Boston 23¢ per cwi.
D.	The old	1
	DIFFERENTIAL—To all	
for each 1,	/10 of 1% variation in	rom 3.7% test\$.035
Depuctions	From all the above	prices, deductions are to
be made as	e follows:	prices, deductions are
	nembers of qualified	espointions //
v (Art.	IX—Sec. 2)	. Such deductions as are
1221		authorized by members
From no		-Sec. 1) 2¢ per cwt.
I tom in	m-memoers (111. 111	-Sec. 1, per c

MARKET ADMINISTRATOR—GREATER BOSTON, MASSACHUSETTS, MARKETING AREA

EXTRACTS FROM THE COMPUTATIONS WHICH RESULTED IN THE UNIFORM PRICES ANNOUNCED FOR THE FEBRUARY 16-28, 1938 PERIOD (Art. VII—Sec. 2—Par. 7)

0	1		-	~~		~		-
1	٨.	rt.	. 1	71	I —	Se	.96	2

-,		y
Par. 1	Total of the respective values of milk Total net amount of the differentials applicable pursuant to Section 4 of Art. VIII	
		\$285,522.26
3	Total amount to be paid to producers pursuant to paragraph 2 of Sec- tion 1 of Art. VIII (New Pro-	
	ducers)	990.38
7		\$284,531.88
4	Total milk received from regular pro- ducers * 12,820,667 lbs.	
5	Blended price per cwt. Deduction for the purpose of retaining a cash balance	\$2.219
6	Addition for the purpose of distributing cash balance available	\$2.179 .044
41.	Basic blended price from which zone prices are called	\$2,223

Pounds of Milk
Total Daily Average

 Total Receipts reported
 12,896,740
 992,057

 Net Class I Milk reported
 5,557,824
 427,525

 % Class I Milk to Total Receipts—43.09%

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. March 12, 1938

MARKET ADMINISTRATOR for the

GREATER BOSTON MARKETING AREA

UNIFORM PRICES FOR 3.7 MILK, BY ZONES March 1-15, 1938

	9 Re	Blended Price per cwt. to egular Producers*	Class II Price per cwt. to New Producers
	red to plants located es of the State House		
in Boston	s of the State House	\$2.373	\$1.355
	red to plants located		
	miles from the State		
House in Bost	ton, as follows:		
Zone	Miles		
6	51-60	1.946	1.295
10	91-100	1.911	1.295
11	101-110	1.905	1.295
12	111-120	1.839	1.295
13	121-130	1.887	1.295
14	131-140	1.875	1.295
15	141-150	1.875	1.295
16	151-160	1.858	1.295
17	161-170	1.858	1.295
18	171-180	1.852	1.295
19	181-190	1.840	1.295
20	191-200	1.828	1.295
21	201-210	1.828	1.295
22	211-220	1.817	1.295
23	221-230	1.811	1.295
24	231-240	1.805	1.295
25	241-250	1.805	1.295
* 26	251-260	1.793	1.295
27	261-270	1.787	1.295
28	271-280	1.781	1.295
29	281-290	1.781	1.295
30	291-300	1.770	1.295

LOCATION DIFFERENTIALS—To the above prices to regular producers only are to be added the following amounts:

For milk from farms located within 40 miles of the State House in Boston.....46¢ per cwt. For milk from farms located within 41-80 miles of the State House in Boston.....23¢ per cwt.

	Butterfat Differential—To all producers, for each 1/10 of 1% variation from 3.7% test\$.035
	DEDUCTIONS—From all the above prices, deductions are to be made as follows: From members of qualified associations (Art. IX—Sec. 2)
	MARKET ADMINISTRATOR—GREATER BOSTON, MASSACHUSETTS, MARKETING AREA
	Extracts from the Computations which Resulted in the Uniform Prices Announced for the March 1-15, 1938
	Period (Art. VII—Sec. 2—Par. 7)
	Art. VII—Sec. 2
	Par. 1 Total of the respective values of milk \$293,815.75 2 Total net amount of the differentials applicable pursuant to Section 4 of
	Art. VIII 50,811.53
	\$344,627.28
	3 Total amount to be paid to producers
*	pursuant to paragraph 2 of Section 1 of Art. VIII (New Producers) 618.69
	\$344,008.59
	4 Total milk received from regular pro-
	ducers 15,631,983 lbs. Blended price per cwt. \$2.201
	5 Deduction for the purpose of retain-
	ing a cash balance .04
	\$2.161
,	6 Addition for the purpose of distrib- uting cash balance available .032
	Basic blended price from which zone prices are calculated \$2.193

Total Receipts reported 15,679,012 1,045,267
Net Class I Milk reported 6,500,569 433,371
% Class I Milk to Total Receipts—41.46%

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. March 26, 1938

MARKET ADMINISTRATOR for the

GREATER BOSTON MARKETING AREA

UNIFORM PRICES FOR J.7 MILE, BY ZONES March 16-31, 1938

		Blended Price per cwt. to Regular Producers*	Class II Price per cwt. to New Producers
For milk deliv	vered to plants lo	cated	
	les of the State I		
in Boston		\$2.292	\$1.326
	vered to plants lo		
more than 4	0 miles from the	State	
	ston, as follows:		
4.43		8	
Zone	Miles		
6	51-60	1.865	1.266
10	91-100	1.830	1.266
11	101-110	1.824	1.266
12	111-120	1.818	1.266
13	121-130	1.806	1.266
* 14	131-140	1.794	1.266

10		21-100	1.000	. 1.200
11		101-110	1.824	1.266
12		111-120	1.818	1.266
13		121-130	1.806	1.266
14		131-140	1.794	1.266
15		141-150	1.794	1.266
16		151-160	. 1.777	1.266
17		161-170	1.777	1.266
18		171-180	1.771 .	1.266
19		181-190	1.759	1.266
20	1	191-200	1.747	1.266
21		201-210	1.747	1.266
22	1	211-220	1.736	1.266
23	6.	221-230 *	1.730	1,266
24		231-240	1.724	1.266
25		241-250	1.724	1.266
26		251-260	1.712	1.266

					. ,
27		261-270	1.706		1.266
28	0	271 - 280	1.700		1.266
29		281-290	1.700) .	1.266
30		291-300	1.689)	1.266
For For	milk files of t	y are to be ac rom farms he State Hor om farms loc	To the above preded the following located within a see in Boston	ng ar 40 4 80	nounts: 6¢ per cwt.
BUTTERF.	AT DIF	FERENTIAL—	To all produced tion from 3.7%	rs.	
be mad From	de as fo m mem Art. IX-	llows: bers of qua —Sec. 2)	lified association Such de authorizet. IX—Sec. 1)	ns educt	ions as are
MARKET	ADMINI		EATER BOSTON, I	MASS	ACHUSETTS,
			ATIONS WHICH R		
.*			I—Sec. 2—Par.		1.
Art: VII	-Sec. 2				/
Par. 1	Total app	net amount	etive values of m of the differenti nant to Section 4	als	\$354,132.03 63,668.95
3	pur	suant to pa	e paid to produce ragraph 2 of S VIII (New P	ers ec-	\$417,800.98
		ers)			881.44
			1.		\$416,919.54
4		milk receiv		1	
1 (m regular p	10 614 045 1	ha	
1	auc	ers	19,614,045 1	DS.	

		Blended price per cwt.		\$2.126
	5	Deduction for the purpose ing a cash balance	of retain-	.04
		ing a cash balance		01
:	· ·			\$2.086
	C	Addition for the purpose	of distrib	φ2.000
	6	uting cash balance availa		.026
		Basic blended price from v prices are calculated	which zone	\$2.112
- 4			Pounds	of Milk Daily Average
Tat	al Da	ceipts reported	19,682,637	1,230,165
Net	Class	I Milk reported	7,292,339	455,771
7ct	lass	Milk to Total Receipts—37	.05%	
Offic	ce of	the Market Administrator	- /	
		5, 80 Federal Street, Boston	, Mass.	
	il 12,			
	,		* *	

MARKET ADMINISTRATOR for the

G	REATER BOSTON I	MARKETING AREA	. 8
	FORM PRICES FOR	3.7 MILE, BY ZONE	8
. 0	April 1-1	5, 1938	
		Blended Price per cwt. to Regular Producers*	Class II Price per dwt. to New Producers
within 40 mi in Boston For milk deliv more than 4	ered to plants le les of the State le ered to plants le 0 miles from the eston, as follows:	House \$2.239 cated State	\$1.267
2000 6 . 10 . 11 . 12 . 13 . 14	51-60 91-100 101-110 111-120 121-130 131-140	1.812 1.777 1.771 1.765 1.753 1.741	1.207 1.207 1.207 1.207 1.207 1.207
	**		,

15		141-150		1.741	1.207
16		151-160		1.724	1.207
17	. *:	161-170	. *	1.724	1.207
18		171-180		_ 1.718	1.207
19		181-190		1.706	1.207
20		191-200		1.694	1.207
21		201-210	•	1.694	1.207
		211-220		1.683	1.207
$\begin{array}{c} 22 \\ 23 \end{array}$		221-230	. •	1.677	1.207
24	+ + +	231-240		1.671	1.207
.25		241-250		1.671	1.207
26		251-260		1.659	~1.207
27		261-270		1.653	1.207
28		271-280		1.647	1.207
29		281-290		1.647	1.207
30		291-300		1.636	1.207

*Location Differentials—To the above prices to regular producers only are to be added the following amounts:

For milk from farms located within 40 miles of the State House in Boston.....46¢ per cwt. For milk from farms located within 41-80

miles of the State House in Boston.....23¢ per cwt.

BUTTERFAT DIFFERENTIAL To all producers, for each 1/10 of 1% variation from 3.7% test.....\$.033

DEDUCTIONS—From all the above prices, deductions are to be made as follows:

From members of qualified associations

(Art. IX—Sec. 2)..... Such deductions as are authorized by members

From non-members (Art. IX—Sec. 1).....2¢ per cwt.

MARKET ADMINISTRATOR—GREATER BOSTON, MASSACHUSETTS, MARKETING AREA

EXTRACTS FROM THE COMPUTATIONS WHICH RESULTED IN THE UNIFORM PRICES ANNOUNCED FOR THE APRIL 1-15, 1938

PERIOD (Art. VII—Sec. 2—Par. 7)

Art. VII-Sec. 2

• Par. 1	Total of the respective values of milk Total net amount of the differentials applicable pursuant to Section 4 of Art. VIII	\$338,307.50 63,872.46
		\$402,179.96
. 3	Total amount to be paid to producers pursuant to paragraph 2 of Sec-	4102,110.00
	tion 1 of Art. VIII (New Producers)	556.67
•		\$401,623.29
4.	Total milk received from regular pro- ducers 19,510,377 lbs.	
5	Blended price per cwt. Deduction for the purpose of retaining a cash balance	\$2,059 .04
		\$2.019
6	Addition for the purpose of distrib- uting cash balance available	.04
	Basic blended price from which zone prices are calculated	\$2.059

Total Receipts reported 19,555,784 1,303,719 Net Class I Milk reported 6,823,152 454,877 Class I Milk to Total Receipts—34.89%

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. April 27, 1938

MARKET ADMINISTRATOR for the Greater Boston Marketing Area

Uniform Prices for 3.7 Milk, by Zones April 16-30, 1938

For milk delivered to plants located within 40 miles of the State House in Boston \$2.099 \$1.163

For milk delivered to plants located more than 40 miles from the State House in Boston, as follows:

	Zone		Miles			
	6		51-60		1:672	1.103
	10	*** **	91-100	1000	1.637	1.103
	11		101-110		1.631	1.103
	12		111-120		1.625	1.103
	13	,	121-130		1.613	1.103
4	14		131-140		1.601	1.103.
	15		141-150		1.601	1.103
	16		151-160	, ,	1.584	1.103
	17		161-170		1.584	1.103
	18		171-180		1.578	1.103
	19		181-190		1.566	1.103
	20		191-200	17.	1.554	1.103
	21	19	201-210		1.554	1.103
	22.	٠	211-220	14.	1,543	1.103
	23,		221-230		1.537	1.103
	24 .		231-240	-1	1.531	1.103
	25		241-250		1.531	1.103
	26		251-260		1.519	1.103
	27		261-270		1.513	1.103
	28		271-280	1.5	1.507	1.103
•	29		281-290	1	1.507	1.103
	30		291-300		1.496	1.103
		*				

Location Differentials—To the above prices be regular producers only are to be added the following amounts:

miles of the State House in Boston.....23¢ per cwt.

BUTTERFAT DIFFERENTIAL—To all producers, for each 1/10 of 1% variation from 3.7% test	\$.031
DEDUCTIONS—From all the above prices, deductions be made as follows: From members of qualified associations (Art. IX—Sec. 2)	etions as are by members
MARKET ADMINISTRATOR-GREATER BOSTON, MAS	SACHUSPTTS
MARKETING AREA	SACE USETTS,
EXTRACTS FROM THE COMPUTATIONS WHICH RESU	LTED IN THE
Uniform Prices Announced for the April 1	6-30, 1938
Period (Art. VII-Sec. 2-Par. 7)	
Art. VII—Sec. 2	
. Par. 1 Total of the respective values of milk	\$386,549.43
2 Total net amount of the differentials applicable pursuant to Section 4 of	
Art. VIII	78,413.63
	\$464,963.06
3 'Total amount to be paid to producers pursuant to paragraph 2 of Sec-	
tion 1 of Art. VIII (New Pro-	
ducers)	837.29
	\$464,125.77
4 Total milk received	
from regular producers 24,096,839 lbs.	
Blended price per cwt.	\$1.926
5 Deduction for the purpose of retain- ing a cash balance	.04
	A1 000
6 Addition for the purpose of distrib-	\$1.886
uting cash balance available	.033
Basic blended price from which zone	A1 010
prices are calculated	\$1.919

Pounds of Milk 24,171,666 1,611,444 7,478,767 498,584

\$2.022

\$1.143

Net Class I Milk reported 7,47 % Class I Milk to Total Receipts 30.94%

Total Receipts reported

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. May 12, 1938

MARKET ADMINISTRATOR for the

GREATER BOSTON MARKETING AREA

UNIFORM PRICES FOR 3.7 MILK, BY ZONES May 1-15, 1938

		Blended Price per cwt. to Regular Producers*	Class II Price per cwt. to New Producers
delivered			

in Boston For milk delivered to plants located more than 40 miles from the State House in Boston, as follows:

2	one	Miles	2.	*			
	6	51-60			1.595		1.083
1	0.	91-100			1.560		1.083
	1	101-110		,	1.554		1.083
	2	111-120			1.548		1.083
1		121-130.			1.536		1.083
	4 .	131-140	1		1.524		1.003
	5. /	141-150		,	1.524		1.083
	6	151-160			1.507		1.083
	7	161-170			1.507		1.083
	8 .	171-180			1.501		1.083
	9	181-190			1.489		1.083
	0	/ 191-200	*	4	1.477		1.083
2		201-210			1.477		1.083
	2	211-220			1.466		1.083
	3	221-230			1.460	ŧ .	1.083
	4	231-240	٠.		1.454		1.083
	5	241-250			1.454		1.083
2	6	251-260	. ;	,	1.442		1.083

Exhibits	
27 261-270 1.436 28 271-280 1.430 29 281-290 1.430	1.083 1.083 1.083
30 291-300 1.419	1.083
LOCATION DIFFERENTIALS—To the above prices producers only are to be added the following a For milk from farms located within 40 miles of the State House in Boston For milk from farms located within 41-80 miles of the State House in Boston	amounts: 46¢ per cwt.
BUTTERFAT DIFFERENTIAL—To all producers, for each 1/10 of 1% variation from 3.7% te	st\$.03
DEDUCTIONS—From all the above prices, deduce be made as follows: From members of qualified associations (Art. IX—Sec. 2)	etions as are
MARKET ADMINISTRATOR—GREATER BOSTON, MAS	15
MARKETING AREA	SACHUSEIIS
EXTRACTS FROM THE COMPUTATIONS WHICH RESU	LTED IN THE
Uniform Prices Announced for the May 1	-15, 1938
Period (Art. VII—Sec. 2—Par. 7)	
Art. VII—Sec. 2	
Par. 1 Total of the respective values of milk-	\$391.810.53
2 Total net amount of the differentials	100
applicable pursuant to Section 4 of	00.051.44
Art. VIII	83,051.44
9	\$474,861.97
3 Total amount to be paid to producers pursuant to paragraph 2 of Sec-	
tion 1 of Art. VIII (New Producers)	1,072.92
	\$473,789.05
4 Total milk received from regular producers 25,477,038 lbs.	

	Blended price per cwt.		\$1.86 /
5	Deduction for the purpo	se of retain-	
	ing a cash balance		.04
			\$1.82
. 6	Addition for the purpos	e of distrib.	\$1.02
	uting cash balance av		.022
	Basic blended price from	n which zone	41.040
	prices are calculated	e	\$1.842
	4	Pounds	
Total Dog	ointe vanouted	Total 25,575,140	1,705,009
	eipts reported I Milk reported	7,049,747	469,963
	Milk to Total Receipts		, 100,000
	1		. 0
	he Market Administrator		
	, 80 Federal Street, Bost	on, Mass.	
May 26, 1	938		
	ę.		
	MARKET ADMINIS	TRATOR	
	for the		
	GREATER BOSTON MARI	KETING AREA	
	UNIFORM PRICES FOR 3.7		
			ab .
	May 16-31, 1	938	
		Blended Price per cwt. to Regular Producers*	Class II Price per cwt. to New Producers
For milk	delivered to plants locate	ed	
within -	10 miles of the State Hou	se	
in Bost		\$1.960	\$1.111
	delivered to plants locate		
	an 40 miles from the Sta	te	
	n Boston, as follows:		
Zone	Miles		
10	51-60	1.533	1.051
10	91-100	1.498	1.051
12	101-110 111-120	1.492 1.486	1.051 1.051
13	121-130	1.474	1.051
14	131-140	1.462	1.051
	101-110		1.001

	198							
	15		141-150		1.462		1.051	
	16		151-160		1.445		1.051	2
	17		161-170		1.445		1.051	
	18		171-180		1.439	•	1.051	
	19		181-190		1.427		1.051	
٠	20		191-200		1.415		1.051	
	21		201-210	4	1.415	1	1.051	
	22		211-220		1.404	,	1.051	
	23.		221-230	1 .	1.398	-	1.051	
	24		231-240		1.392		1.051	
	25		241-250		1.392	•	1.051	
	26	1	251-260	-	1.380		1.051	
	27		261-270		1.374		1.051	
	28		271-280		1.368		1.051	
	29		281-290		1.368		1.051	
	30		291-300		1.357		1.051	
		1						

*Location Differentials—To the above prices to regular producers only are to be added the following amounts:

For milk from farms located within 48 miles of the State House in Boston.....46¢ per cwt. For milk from farms located within 41-80 miles of the State House in Boston.....23¢ per cwt.

PUTTERFAT DIFFERENTIAL—To all producers, .
for each 1/10 of 1% variation from 3.7% test.....\$.029

DEDUCTIONS—From all the above prices, deductions are to be made as follows:

From members of qualified associations
(Art. IX—Sec. 2)..........Such deductions as are
authorized by members

From non-members (Art. IX—Sec. 1).....2¢ per cwt.

MARKET ADMINISTRATOR—GREATER BOSTON, MASSACHUSETTS, MARKETING AREA

Extracts from the Computations which Resulted in the Uniform Prices Announced for the May 16-31, 1938
Period (Art. VII—Sec. 2—Par. 7)

Art. \	VII-	-Sec.	. 2

Par. 1 Total of the respective values of milk 2 Total net amount of the differentials applicable pursuant to Section 4 of Art. VIII 3 Total amount to be paid to producers pursuant to paragraph 2 of Section 1 of Art. VIII (New Producers) 1,38	0.36
applicable pursuant to Section 4 of Art. VIII 3 Total amount to be paid to producers pursuant to paragraph 2 of Section 1 of Art. VIII (New Pro-	7.49
3 Total amount to be paid to producers pursuant to paragraph 2 of Sec- tion 1 of Art. VIII (New Pro-	
3 Total amount to be paid to producers pursuant to paragraph 2 of Sec- tion 1 of Art. VIII (New Pro-	
tion 1 of Art. VIII (New Pro-	9.47
	9.47
\$549,68	8.02
Total milk received from regular producers 30,644,561 lbs.	
Blended price per cwt. \$1.75)4
5 Deduction for the purpose of retaining a cash balance .04	1
\$1.75	54 "
6 Addition for the purpose of distrib- uting cash balance available .02	
Basic blended price from which zone	_
prices are calculated \$1.78	30
Pounds of Milk Total Daily Av	verage
Total Receipts reported 30,775,616 1,923 Net Class I Milk reported 7,652,966 478	

% Class I Milk to Total Receipts—24.87%

Office of the Market Administrator
Room 746, 80 Federal Street, Boston, Mass.

June 11, 1938

MARKET ADMINISTRATOR. for the

GREATER BOSTON MARKETING AREA

UNIFORM PRICES FOR 3.7 MILK, BY ZONES
June 1-15, 1938

Blended Price

Class II Pri

Reg	ular Producers*	New Producer
For milk delivered to plants located	-	
within 40 miles of the State House		
in Boston	\$1.92	\$1.049
For milk delivered to plants located	*	

For milk delivered to plants located more than 40 miles from the State House in Boston, as follows:

	Zone		Miles			*		*		
6	6	0	51-60	* .			1.493	4	.989	
	10		91-100				1.458		.989	•
	11	Tin	101-110				1.452	1	.989	
	12	-0	111-120				1.446	-	.989	-
	13		121-130				1.434		.989	
	14		131-140				1.422		.989	*
	15		141-150		4 [1.422		.989	1
	16		151-160		.*		1.405		.989	
	17		161-170				1.405		.989	
	18		171-180				1.399	4 10	.989	
	19		181-190				1:387		.989	
	20		191-200				1.375		.989	,
	21	1	201-210				1.375	£1	.989	
	22		211-220	**			1.364		.989	
	23		221-230				1.358		.989	
	24		231-240				1.352		.989	e.
	25		241-250				1.352	* *	.989	
	26		251-260				1.340		.989	
	27		261-270				1.334		989	-
	28	14.	271-280			,	1.328		.989	
	29	*	281-290	+			1.328		.989	
	30		291-300				1.317		.989	
	00									

^{*}Location Differentials—To the above prices to regular producers only are to be added the following amounts:

For milk from farms located within 40 miles of the State House in Boston 46¢ per cwt.

For milk from farms located within 41-80 miles of the State House in Boston	23¢ per cwt.
Butterfat Differential—To all producers, for each 1/10 of 1% variation from 3.7% test	\$.027
DEDUCTIONS—From all the above prices, deductions be made as follows: From members of qualified associations (Art. IX—Sec. 2)	tions as are by members
MARKET ADMINISTRATOR—GREATER BOSTON, MASS MARKETING AREA	SACHUSETTS,
Extracts from the Computations which Resu Uniform Prices Announced for the June 1 Period (Art. VII—Sec. 2—Par. 7)	
Art. VII—Sec. 2	
Par. 1 Total of the respective values of milk 2 Total net amount of the differentials applicable pursuant to Section 4 of Art. VIII	\$420,858.96 97,434.24
3 Total amount to be paid to producers pursuant to paragraph 2 of Section 1 of Art. VIII (New Producers	\$518,293.20 1,118.96
4 Total milk received from regular pro- ducers 29,675,524 lbs.	\$517,174.24
Blended price per cwt. 5 Deduction for the purpose of retaining a cash balance	\$1.743 .04
	\$1.703

14

15

16

17

18

6 Addition for the purpose of distributing cash balance available

.037

Basic blended price from which zone prices are calculated

\$1.740

1.013

1.013

1.013

1.013

1.013

1.507

1.507

1.490

1.490

1.484

Total Receipts reported 29,788,371 1,985,891
Net Class I Milk reported 7,326,215 488,414
% Class I Milk to Total Receipts—24.59%

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. June 27, 1938

MARKET ADMINISTRATOR

for the

GREATER BOSTON MARKETING ABEA

UNIFORM PRICES FOR 3.7 MILK, BY ZONES

June 16-30, 1938

	o une 10-or	, 1000	*
		Blended Price per cwt. to Regular Producers*	Class II Price per cwt. to . New Producers
For milk deliv	ered to plants lo	cated	
within 40 mi	ies of the State H	louse	
in Boston		\$2.005	.\$1.073
For milk deliv	ered' to plants lo	cated	
more than 40	miles from the	State	
House in Bo	ston, as follows:	* * *	
Zone	Miles		
. 6	51-60	1.578	1.013
10	91-100	1.543	1.013
11	101-110	1.537	1.013
12	111-120	1.531	1.013
13	121-130	1.519	1.013

131-140

141-150

151-160

161-170

171-180

		The second secon	
19	181-190	1.472	1.013
20	191-200	1.460	1.013
21	201-210	1.460	1.013
22	211-220	1.449	1.013
23	221-230	1.443	1.013
24	231-240	1.437	1.013
25	241-250	1.437	1.013
26	251-260	1.425	1.013
27	261-270	1.419	1.013
28	271-280	1.413	1.013
29	281-290	1.413	1.013
30	291-300	1.402	1.013
producers	ifferentials—To	ed the following a	

BUTTERFAT DIFFERENTIAL—To all producers, for each 1/10 of 1% variation from 3.7% test.....\$.028

DEDUCTIONS—From all the above prices, deductions are to be made as follows:

From non-members (Art. IX—Sec. 1).....2¢ per cwt.

MARKET ADMINISTRATOR—GREATER BOSTON, MASSACHUSETTS,
MARKETING AREA

Extracts from the Computations which Resulted in the Uniform Prices Announced for the June 16-30, 1938
Period (Art. VII—Sec. 2—Par. 7)

Art. VII-Sec. 2

Par. 1 Total of the respective values of milk \$402,851.79

2 Total net amount of the differentials applicable pursuant to Section 4 of Art. VIII

88,221.58

\$491,073,37

3 Total amount to be paid to producers pursuant to paragraph 2 of Section 1 of Art. VIII (New Producers

1.074.55

\$489,998.82

4 Total milk received from regular producers

26,952,597 lbs.

Blended price per cwt.

Deduction for the purpose of retaining a cash balance

\$1.818

\$1.778

6 Addition for the purpose of distributing cash balance available

.047

Basic blended price from which zone prices are calculated

\$1.825

Pounds of Milk
Total Daily Average

Total Receipts reported Net Class I Milk reported

27,058,409 7,623,399

1,803,894 508,227

% Class I Milk to Total Receipts-28.17%

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. July 12, 1938

MARKET ADMINISTRATOR

for the

GREATER BOSTON MARKETING AREA

UNIFORM PRICES FOR 3.7 MILK, BY ZONES

July 1-15, 1938

Blended Price per cwt. to Regular Producers*

	vered to plant	s located		New 1 rouncers
in Boston			\$2.051	\$1.081
For n. lk deli more than	vered to plant 40 miles from oston, as follo	the State		
Zone .	Miles	* ,	4.0	1.
6 .	51-60		1.624	1.021
10	91-100		1.589	1.021
11	101-110		1.583	1.021
12	111-120		1.577	1.021
13	121-130	.1	1.565	1.021
14	131-140		1.553	1.021
15	141-150		1.553	1.021
16.	151-160		1.536	1.021
17	161-170	- 5	1.536	1.021
18	171-180		1.530	1.021
19	181-190		1.518	1.021
20	191-200		1.506	1.021
21	201-210		1.506	1.021
22	211-220		1.495	1.021
23	. 221-230		1.489	1.021
24	231-240		1.483	1.021
25	241-250		1.483	1.021
26	251-260		1.471	1.021
27	261-270		1.465	1.021
28	271-280		1.459	1.021
29	281-290		1.459	1.021
30	291-300		1 448	1 021

^{*}Location Differentials—To the above prices to regular producers only are to be added the following amounts:

mi'es of the State House in Boston For milk from farms-located within 41-80 miles of the State House in Boston	
BUTTERFAT DIFFERENTIAL—To all producers, for each 1/10 of 1% variation from 3.7% test	\$.028
DEDUCTIONS—From all the above prices, deduce be made as follows: From members of qualified associations (Art. IX—Sec. 2)	etions as are by members .2¢ per cwt.
MARKET ADMINISTRATOR—GREATER BOSTON, MAS	SACHUSETTS,
MARKETING AREA	
UNIFOR PRICES ANNOUNCED FOR THE JULY 1 PERIOD (Art. VII—Sec. 2—Par. 7) Art. VII—Sec. 2 Par. 1 Total of the respective values of milk	
2 Total net amount of the differentials applicable pursuant to Section 4 of Art. VIII	79,130.40
3 Total amount to be paid to producers pursuant to paragraph 2 of Section 1 of Art. VIII (New Producers)	\$453,609.47
	\$452,600:69
4 Total milk received from regular pro- ducers 24,372,009-lbs.	
Blended price per cwt.	\$1.857

5	Deduction for the purpos ing a cash balance	e of retain-	.04
			\$1.817
6	Addition for the purpose uting cash balance avai	of distrib- lable	.054
	Basic blended price from prices are calculated	which zone	\$1.871
.,		Pounds	of Milk Daily Average
	ceipts reported	24,470,649	1,631,377
Net Clas	s I Milk reported	7,463,887	497,592
	I Milk to Total Receipts—	80.50%	

Office of the Market Administrator Room 746, 80 Federal Street, Boston, Mass. July 27, 1938

MARKET ADMINISTRATOR

for the

Greater Boston Marketing Area
Uniform Prices for 3.7 Milk, by Zones
July 16-31, 1938

	· i.			1 .		Blended Price per cwt. to Regular Producers*	Class II Price per cwt. to New Producers
	For m	ilk d	leliver	ed to plan	ts loca	ted	*.
	with	in 4	0 miles	of the Sta	te Ho	nse	
		Bosto		or the st	i IIO	\$2.197	\$1.095
				ed to plan	ta laco		φ1.000 .
	TOI III	alk U	lenver	ed to plan	ts loca	tea	
+				niles from		ate	
	Hou	se ir	Bosto	on, as follo	ws:		
	Zone			Miles			
	. 6			51-60	, e.	1.770	1.035
	10			91-100		1.735	1.035
	11			101-110		1.729	1.035
	12			111-120		1.723	1.035
	13		×. *	121-130		1.711	1.035

14	131-140	1,6	99 1.035	19
15	141-150	1.6		
16	151-160	1.6		
17	161-170		82 1.035	
18	171-180	1.6		
19	181-190	1.6		
20	191-200	1.6		
21	201-210	1.6		
22	211-220	1.6		
23	221-230	1.6		
24	231-240	1.6	29 1.035	
25	241-250	1.6	29 1.035	
26	251-260	1.6	1.035	
27	261-270	1.6	11 1.035	
28	271-280	1.6	05 1.035	
29*	281-290	1.6		
30	291-300	1.5	94 1.035	
LOCATION		To the above		

*Location Differentials—To the above prices to regular producers only are to be added the following amounts:

For milk from farms located within 40
miles of the State House in Boston......46¢ per cwt.

For milk from farms located within 41-80

or milk from farms located within 41-80 miles of the State House in Boston.....23¢ per cwt.

BUTTERFAT DIFFERENTIAL—To all producers, for each 1/10 of 1% variation from 3.7% test.....\$.028

DEDUCTIONS—From all the above prices, deductions are to be made as follows:

From members of qualified associations

(Art. IX—Sec. 2)......Such deductions as are authorized by members

From non-members (Art. IX—Sec. 1).....2¢ per cwt.

MARKET ADMINISTRATOR—GREATER BOSTON, MASSACHUSETTS,
MARKETING AREA

EXTRACTS FROM THE COMPUTATIONS WHICH RESULTED IN THE UNIFORM PRICES ANNOUNCED FOR THE JULY 16-31, 1938 PERIOD (Art. VII—Sec. 2—Par. 7)

Art. VII-	-Sec. 2	4
Par. 1	Total of the respective values of milk	\$385,911.93
2	Total net amount of the differentials applicable pursuant to Section 4 of Art. VIII	74,353.96
		\$460,265.89
3	Total amount to be paid to producers pursuant to paragraph 2 of Sec- tion 1 of Art. VIII (New Pro-	
	ducers)	842.47
1		\$459,423.42
4	Total milk received from regular producers 22,930,411 lbs.	
5	Blended price per cwt. Deduction for the purpose of retain-	\$2.004
	ing a cash balance	.04
		\$1.964
6	Addition for the purpose of distrib-	ф1.504
	uting cash balance available	.053
	Basic blended price from which zone prices are calculated	\$2.017
*	Pound	le of Milk
Total D	Total	Daily Average
Net Class	peipts reported 23,011,675 I Milk reported 9,041,750 I Milk to Total Receipts—39.29%	1,438,230 565,109
, 01455	Title to Total Receipts—03.23 70	

Office of the Market Administrator Room 746/80 Federal Street, Boston, Mass. August 12, 1938 Exhibit No. 11-11l is omitted by stipulation of the parties. It will be certified to the Appellate Court as an original exhibit.

Exhibit No 12-12e is omitted by stipulation of the parties. It will be certified to the Appellate Court as an original exhibit.

EXHIBIT 13.

MARKET ADMINISTRATOR—GREATER BOSTON MARKETING AREA LIST OF HANDLERS INCLUDED IN COMPUTATION OF BLENDED PRICE For the Periods August 1 through December 31, 1937

	Au	gust	Sept 1-15	ember 16-30	Octo	ber [6-3]	Noven 1-15 1	nber	Dece 1-15	mber 16-3
Bellows Falls Co-op. Creamery,				10.00						
Inc.			-	-	_	-		-	-	-
W. T. Boyd & Sons—see page 3			*					*		
Francis I. Bradford										
James A. Bustead										
David Buttrick Co.						-	-	_	-	-
Cabot Farmers' Co-op. Creamery	. 9								-	
Co., Inc.										
Caledonia County Co-op. Assn.,										
Inc.			-	_	-	-	_	-	-	1
George L. Chapin	-		_	-	-	_		_	-	-
C. W. Coburn										
Anthony J. Conde	_	_	_		-	_		-		٠ _
Corinth Creamery, Inc.	-		_	_	-	_	_	-		
Dean Dairy—see page 3	-							•		
Deerfoot Farms Company						_	_	_	-	
Dutchland Farms, Inc.	_	-1	-	_						
Eastland Farms, Inc.	_	1	_	_	_		-4	- 1	-	-
Elm Spring Farm Co.			-	_		_	_ 7	_	-	-
Fairfield Farms, Inc.			_		-	_	_		7-12	-
Fairview Creamery, Inc.	_		-			_	_	_	_	_
Malcolm D. Ferguson		-	-				_	_	_	-
Forbes Milk Company		_			_	_	_	_	.=	_
Green Valley Creamery, Inc.	-	•	_			_		-	_	
H. P. Hood & Sons, Incsee	-	-								_
page 3	-5	•	-	_	-	_		-	-	_
Kingston Bros., Inc.	-	•	****	_	_	-	_	_		
Emma M. Knapp	-		-	-	-	-	-		-	
Lang Bros., Inc.		-	-	_	-	-	-	-	-	
Lyndonville Creamery Assn.—				1						
see page 3		•		•	-	-	-	-	-	
Manchester Dairy, Inc.		•			•	•			•	•
Marland Dairy, Inc.			•	-	-		-	-		-
J. F. McAdams & Bros., Inc										
see page 3			-	-	-	-	-	-	-	-
McCarthy Bros. Milk Co.	-		-	-	-	-	-	-	-	•
Milton Co-op. Dairy Corp see	-	,								-
page 3		1 .								

					<u>E</u>					
				ember 16-30						
Mountain View Creamery		-	-	-	-	_	-	_		-
New England Creamery Co.			_	_	-	-	-	-		-
New England Dairies, Inc see										
pages 4 and 5						*	*	•	*	
Noble's Milk Company		* ;	-	-	-		-	-	-	-
Norway Creamery	-		-	-	-	-	-	-	-	-
Edson A. Porter	-		-	-	-	-	-	-	-	-
J. B. Prescott Co.			-	-	-	-	-		-	-
Prospect Valley Farm	-	-	-		-	-	-	-	-	-
Putnam Brothers						2 *	*			
John A. Sellars	-		*****	-	-	-	-	-		-
Seven Oaks Dairy Co.			-	-	-	-	-	-	-=	-
Shawsheen Dairy, Inc.	*									
Clinton W. Spear			-		-	-	-	· eie	-	-
H. L. Stone Dairy, Inc.		-			-	-	-	-	-	-
United Farmers' Co-op. Cream-		,						1440		
ery Assn., Inc.—see page 4										
Weiler-Sterling Farms Co.	*	-		-	-	-	-	-	-	
West Lynn Creamery				-	-	-		-	-	-
Westwood Farm Milk Co.		-		-	-	-	-	-		-
White Bros. Milk Con Inc										
see page 4		. *	_	-	-	-	-	-	-	-
Whiting Milk Company - see										
page 4			_	-		-	-		_	-
Granville A Wiswall										

Included in Computation.

Not included in Computation.

Market Administrator—Greater Boston Marketing Area
List of Plants of Handlers Reporting Receipts of Milk at
More Than One Plant
For the Periods August 1 through December 31, 1937

	Zone			gust 16-81						ember 16-30		
W. T. Boyd & Sons		_	_	1001	1 10		-	10 01			-	
W. I. Boyd & Sons	Within			_	_	-			-	_	_	_
Nashua, N. H.	40 miles	. "		•		•	•		•	•		•
Laconia, N. H.	11 /	4	•	•		*	•		*	•	-	•
W. Rumney, N. H.	14	. 4	•	•							•	
Dean Dairy	Within							•				
Waltham, Mass.	40 miles		_									
Skowhegan, Maine .	22		_	-	-	-	-	-	-	-		
H. P. Hood & Sons, Inc.	Within											
Charlestown, Mass.	40 miles	. 4	•		_	-	_		-	_	-	-
Auburn, Maine	15	4			-	-		-	-	-	-	-
Barnet, Vt.	18	2.6			_	-	-	-	_	-	-	-
Barton, Vt.	22		•		-	-	-		_	-		-
Belfast, Maine	24	4			-		-	-	-	-	-	-
Colebrook, N. H.	25	4	• '		_	-	_			_	_	_
Eagle Bridge, N. V.	17				-	_	_	-	-	-	-	_
Fairfield, Vt.	27	4					· - :	9 -	-	-	_	-

Included in Computation.

Not included in Computation.

4.	Zone	1-15	ugust 16-31	Sept 1-15	ember 16-30	Oct 1-15	ober 16-31	Nove 1-15	ember	Dece 1.15	mber
Hardwick, Vt,	23			-	-	-	-	-	-	2.10	40-31
Lancaster, N. H.	22			-	-	-	-	-	-	_	_
Newport, Vt.	~ 24		•	-	-	-	-	-	-		_
Newport, Vt.	23		•	-		_	-	-	-	-	_
Plainfield, Vt.	20	-		-		-	_	_	-	-	_
St. Albans, Vt.	27		•	_	_	-	-	_	-	_	_
Salem, N. Y.	19			-	_	-	-0	_	-	_	
Sheldon Jet., Vt.	.28		•	-	-	-	-	_	_	_	_
Unity, Maine	22			-	-		-	_	_	_	_,
West Canaan, N. H.	13			-		-	_	_	_	_	
West Farmington,	1									_	-
Maine	20			-	-	_	_	_	_	_	
Lyadonville Creamery					See .				_		-
Assn.	Within										*
Watertown, Mass.	40 miles						_	٠			
Lyndonville, Vt.	20					_			_	-	-
J. F. McAdams & Bros.,	20								-	-	-
Inc.	Within			٠							•
Chelsea, Mass.	40 miles									*	
Albion, Maine	20			_		7.	_	-	_	-	-
Milton Co-op. Dairy	20	_	-		/	-	_	-	7	-	-
Corp.	Within				/						
Somerville, Mass.					1.		_	_			
Alburg We	40 miles			-/	-	-			•	•	•
Alburg, Vt.	28			1	-	-		•	•	•	•
Colchester, Vt.	25	-	-	1-		-	•		•	•	•
Essex Junction, Vt.	24	-	- '	-	-	•	•			•	•
Fairfax, Vt.	25	-		•	•	•		•		•	•
Georgia, Vt. Laconia, N. H.	25	•	•	•	•	•	•	•	•	• ,	•
Laconia, N. H.	11	•	•	•	•	•	•	•		•	•
Milton, Vt.	25	•	•	•	•	•	•	•	•	•	•
Swanton, Vt.	27	*+	*+		1		. 3				
United Farmers' Co-op.		5									
Creamery Assn., Inc.		1		2:				~			
East Berkshire, Vt.	29	•	•	•	•	•					•
Greensboro, Vt.	22	•	•		•	•	•	•	•	•	
Morrisville, Vt.	24	•		•	• ,	•		•		•	•
Randolph, Vt.	18	•	•		•	•	•	•	•	•	•
Troy, Vt.	25		•	•	•		•	•		•	•
White Bros. Milk Co.,		4				1 . "					
Inc.	Within										
Atlantic, Mass.	. 40 miles	•	. •	-	- "	_	_	-	-	-	-
South Peacham, Vt.	18	•	•	-			_	- :	-	-	-
-South Ryegate, Vt.	18	•	•	-		_	_		_	-	-
Whiting Milk Company	Within							*		, w	
Charlestown, Mass.	40 miles				_	_	_	_	_	_	
Colebrook, N. H.	25			_	_	_ :	_	_	_	-	-
Harmony, Maine	24			_		_	_	_	_	-	_
Newport, Maine	22			_	-	-	_	_	_		
North Walpole, N. H.	12	*		_	_	2	4	_	_	-	-
Randolph, Vt.	18				- 1	_ /	_	_		_	0
Skowhegan, Maine	22			-	_	Ξ.	_		_		
Waterbury, Vt.	22			_	_	_	-		· ,	_	_
Traceroury, Vt.		-		-	-	-	-	-	-	-	-

Included in Computation.

Not included in Computation.
†Incorrectly reported—adjustment made later.

-		*				. 4					
	Zone	At 1-15	16-31	Septe 1-15	mber 16-30					Decer 1-15 1	
New England Dairies,						-					
Inc.											
Bethel, Vt.	17	.#					•	•		•	
Burlington, Vt.	24							•	•		0
Grand Isle, Vt.	26	*	•					. 10.	•		
Granite City-Barre,										2 1	
Vt.	22										
Mt. Mansfield					-4					-	
Stowe, Vt.	22										
Mt. Mansfield	Au 94		. 1								
Waterbury, Vt.	22		1								
	23										
Richmond, Vt.											
St. Albans, Vt.	27 .							-			-
Shelburne, Vt.	23		-	-	-			_	-		-
Tunbridge, Vt.	17		-		-	-	-	-	-	-	
White River, Vt.	17			-	•	-	•			-	-
Cummings, N. H.	12	•	- 1	-	-	-	-	_	-	-	
Hiram, Maine	15	•	* *+	_	-	-	-	_	-	. 7	•
Irona, N. Y.	30	*	* *+	-	_	_	-			-	-
Strafford, Vt.	16	•	•	•	•		•	•		•	
Wells River, Vt. Hoosick, N. Y.	17	. *	0.	•		•	•				•
Hoosick, N. Y.	17	•	+ *+	.++	*+	*+	*+	*+	-	-	-
Bradford, Vt.	17		•		•		•				
Cambridge Jet., Vt.	26					•		•	-	-	-
Chelsea, Vt.	17										
Colebrook, N. H.	25										
Concord, Vt.	20										
Craftsbury, Vt.	23								_	_	-
Derby, Vt.	24	1.							•		
Detroit, Maine	22										
East Berkshire, Vt.	-29					-		-		-	
Enceburg Falls, Vt.	28			_	_	-		-		-	
Essex Center, Vt.	24	-			-	-	-		-		
Fairlee, Vt.	17	•	•	•	•	•	•	•	•	•	
Greensboro, Vt.	22	. •		•		•	•	•	. •	•	•
Hough's Crossing, Vt.		•	. •	. •	•	•	•	•	•	. •	•
kasburg, Vt.	23			-	-	-	-	_	-	-	-
Island Pond, Vt.	25		•			•			•		
Lancaster, N. H.	22		•	•	•	•		•	•	. •	. •
Lisbon, N. H.	18	•		•	•	•-					
McIndoes, Vt.	18		•		. •				. •	•	•
Morrisville, Vt.	24	. *	•			•				•	4
Newbury, Vt.	17			•	. •	•					4
North Haverhill,	• •										
N. H.	17										
Oakland, Maine	19										
Orleans, Vt.	23										
Salisbury, Vt.											
Shoreham VA	20	-	-						-		
Shoreham, Vt.	20	-			-			-			
Union, Maine	. 19										
West Fairlee, Vt.	17		•		•	•	•	•	•	•	

Included in Computation.

Not included in Computation.

Incorrectly reported—adjustment made later.

ducers.

EXHIBIT 14.

MER	PRODUCE	'e	RAT	LOT
III LUIN	I RODUCEI	8 3	DAL	LUI

	the state of the s
1.	How much milk did you deliver during the month of May 1937 to a handler (Boston dealer)?pounds.
2.	What is the name of the handler to whom your milk was delivered?
• •	
	What is the location of the handler's plant to which your milk was delivered in May 1937?
• •	•••••
4.	What is the name of the county and State in which is located the farm where the above milk was produced?
	rocated the farm where the above mink was produced
• •	
5.	Do you approve the issuance of the amendments to Order No. 4 which would make that order read as shown in the attached compilation thereof, released by the United States Department of Agriculture under date of July 9, 1937?
	Yes No
•.	
	Provisions of Order No. 4 relating to prices, pooling, and payments to producers, will not become effective unless the amendments are approved by two-thirds of the pro-

Please answer every question.

EXHIBIT 15.

Co-Operative Association Ballot

- 1. How many producers were members of your association and marketed milk in the Greater Boston Marketing Area through your association during the month of May 1937?
- How many pounds of milk were marketed as milk or cream in the Greater Boston Marketing Area by your association for such producers during the month of May 1937?
- 3. Do you approve the issuance of the amendments to Order No. 4 which would make that order read as shown in the attached compilation thereof, released by the United States Department of Agriculture under date of July 9, 1937?

No.

Yes

payments to	producers,	relating to prices, poo will not become effective roved by two-thirds of	vé unless
duccis.		(Name of Associatio	n)
		(Name of Office	
		(Title)	.,

EXHIBIT 16.

98 101 100 100 100 100 1149 1149 1152 1152 1153 1153

1910 1911 1912 1913 1914 1916 1916 1919 1920 1921 1922 1923 1924 1926 1926 1926 1927

	• •	Commodities	used fm	production		•					1
				*		96	•		bla		noli
	A			. 31		n ı			noti	1	ibo
	190	19E	als rer			oj :	,	.0	ioi Pul	oj :	CHU
Feed	Machi	Fertill	ibling ivatam ito rot d nadt	Equips and supplie	pasg	All con bought in prod	M	Wage blad brind	Commo bought in prod plus wi to hire	Commo bought family mainte	noo IIA
93	102	66	100	101		86		97	86	86	
107	101	86	102	100		103		26	101	100	
91	102	100	103	100	103	86		101	66	101	
107	86	102	101	100	97	105		104	103	100	
102	96	100	93	66	66	66		101	66	102	
100	0100	112	102	106	120	104		102	103	101	G.
. 130	107	120	1117	129	142	124		.71	121	124	
184	126.	137	137	156	149	191	1	140	149	147	
193	165	170	191	181	190	174		176	. 174	177	
211	191	182	189	180	280	192		902	195	210	
137	167	186	202	189	152	174		239	. 681	222	
16	156	156	156	152 .	134.	141	_	120	143	161	
123	142	129	159	140	130	139		146	141	156	
134	146	126	161	136	142	141	-	. 991	147	160	
142	152	120	161	133	151	143	,	99	148	159	
141	153	129	T64	.140	172	147		. 89	152	164	
197	154	***									

20	83	0	7	1	6	00	2	7	0	22	2	7	4	4	63	2	0	80	1	
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1927 1928 1929 1931 1932 1933 1934 1936

* Index numbers may be converted to August 1919-July 1920 base by dividing index numbers on 1910-1914 base by 160

EXHIBIT 17.

United States Department of Agriculture
Bureau of Agricultural Economics
Division of Statistical and Historical Research

INDEX NUMBERS OF PRICES PAID BY FARMERS FOR COMMODITIES 1910-1935

> Washington, D. C. June 1933 and September 1934, Data added June 1935.

Index Numbers of Prices Paid by Farmers for Commodities, 1910-1935

The economic position of the farmer is dependent in a large measure upon prices he pays for what he buys as well as upon prices he receives for what he sells. Some measure of the level of, and changes in prices of all commodities farmers buy, weighted in proportion to their purchases, is necessary as a means of analyzing the agricultural situation. Recognizing such a need, the Bureau of Agricultural Economics constructed and published, first in 1928, and has since maintained, a series of index numbers of the prices of commodities the farmer buys for use in farm production and in the farm home. This series of index numbers, revised to some extent on the basis of more recent and more complete data is herewith presented, with a description of methods used in constructing the series.

In using these index numbers of prices that farmers pay, as well as indications of changes in prices farmers receive, the fact that price changes alone do not measure changes in the economic position of the farmer must be borne in mind. Changes in quantities of goods purchased or needed, and changes in quantities for sale or sold, are also significant factors. But in times of such great economic changes as have occurred in the past 3 years, changes in price levels and variations in prices among groups of commodities are

very important factors in determining the farmer's economic position.

The index number series of prices paid by farmers is constructed to measure changes in prices of goods bought for use in farm production and in the farm home, and to show the relation of these price levels to those which prevailed in the 5-year period 1910-1914.

The price data used in constructing the index were reported only annually 1910-1922, but since then have been reported quarterly in March, June, September, and December. Local dealers in all parts of the United States report prices upon a schedule furnished by the Crop Estimating Service of the United States Department of Agriculture. From the data reported, a simple average is computed for the United States.

The averages of prices for the United States are combined according to their relative importance as determined by average quantities of commodities purchased per farm or per farm family in the 6-year period 1924-1929.

In general the index measures the changes in value from year to year and quarter to quarter of a fixed bill of goods taken as typical of farmers' purchases. Since this is intended to be an indication of change in prices paid for commodities bought, commodities consumed which are produced on the farm, such as milk and eggs, are not represented in the index. In the case of other commodities which are partly consumed as produced on the farm and partly purchased, such as flour, firewood, fence posts, etc., only that part which is purchased is represented in the index.

Commodities have been grouped first to indicate separately the price level of items used in farm production and in consumption by the family. These two groups of commodities have been further classified to show changes in prices of certain classes of commodities. The commodities bought for the farm family have been subdivided into food, clothing, operating expenses, furniture and furnishings, building materials for the house, and automobiles for the use of the family. The commodities bought for use in production

have been subdivided into feed, farm machinery, automobiles and trucks, tractors, fertilizers, building materials other than for the house, equipment and supplies and seed.

An index number has been constructed for each of these subclasses from 1910 to date, except for automobiles for use by the family, and for autos and trucks and for tractors in the production index. The production of these commodities was a comparatively new industry during the bese period 1910-1914, with only limited output, and prices were relatively high compared with later years. By 1917 the output of these commodities had increased rapidly and their prices had declined while the general trend of prices was upward. Since 1917 the trend of their prices has been similar to the trend of prices for other commodities. Prices were not collected on automobiles and trucks before 1917. The index of automobile prices was added to that of the other sub-groups in 1917 and 1918 at the same level as machinery prices for those years. The index of farm machinery prices in 1917 and 1918 averaged 140 percent of the pre-war level, therefore, the index of automobiles for these 2 years was placed at 140: Prices of tractors were not collected until 1925 and tractors were added to the index in that year at the same level as the prices of other farm machinery.

Users of these index numbers of prices paid by farmers are cautioned against their misinterpretation and misuse. These price index numbers do not measure changes in farm expenditures, but merely show changes in the value of a fixed bill of goods from year to year and quarter to quarter. The index number series for all commodities purchased, divided into the index of prices received by farmers for farm products, does not measure the purchasing power of the farmer, but the exchange value of units of commodities farmers buy in relation to units of commodities they sell. Such a calculation fails to measure the purchasing power of the farmer to the extent that these index numbers do not take into account variations in the quantities of goods sold by farmers or, in the quantities of goods purchased.

Furthermore, the commodities included in these index numbers do not represent all sources of receipts or all varieties of expenditures. Income is received from a wide variety of sources and is spent not only for commodities purchased for the family living and for operating the farm but also for interest on mortgages and loans, taxes, rents, railroad service, doctors' services and other items which are not represented by these index numbers. Strictly speaking, the ratio of the index number of prices received for farm products and the index number of prices paid for commodities purchased merely represents the amount that a given quantity of selected farm products would purchase of a given quantity of goods farmers buy in relation to what they would purchase in the base period.

The quality and utility of many of the farm machinery items, as well as of other items the farmer buys, change over a period of years. Engineers have estimated that the wearing quality and capacity of 25 items of farm machinery in 1932 averaged about 170 percent of pre-war: This means that the prices in recent years represent machines of greater producing capacity than in the pre-war years. Similar changes have taken place in other items. Many of the commodities farmers sell are also greatly improved over what they were before the war. No definite allowance can be made as a practical matter in series of prices or in the index number of prices for such changes in quality or utility. Any careful or critical appraisal of changes in prices, however, must take into account the fact that the commodities represented may not be, and are likely not to be, exactly the same between two distant periods of time.

The sub-group index numbers as well as the combined rindex numbers are shown in the accompanying tables together with other related index numbers. The index numbers shown here are for all periods for which data are available to date. This issue contains the recently revised index numbers of prices received for farm products and minor changes have been made in the all commodity index of prices paid by farmers for commodities bought in 1911 and 1912 and from 1918 to 1930.

Table 1.—Index numbers of farm prices, prices paid by farmers and wages

Year and month	Prices paid by farmers for commodities	Prices received for farm products	Ratio of prices received to prices paid	Farm wages paid to hired labor	Commodities bought for production and farm wages
1910	98 .	102	104	97	• 98
1911	101	95	94	97	101
1912	100	100	100	101	99
1913	101	101	100 .	104	103
1914	100	101	101	101	99
1915	105	98	93	102	103
1916	124	118	95	. 112	· 121
1917	149	175	. 117	140	149
1918	176	202	115	176	174
1919	202	213	105	206	195
1920 •	201	211	105	239	189
1921	. 152	125	82	150	• 143
1922	. 149	132	89	146	141
1923	152	. 142	93	166	147
1924	152	143	94 •	166	148
1925	157	156	6 99	168	152
1926	155	145	. 94	171	152
1927	153	139	91	170	151
1928	155	149	96	169	153
1929	153	146	95	170	153
1930	145	126	87	152	143
1931	124	87	70	116	120
1932	107	65	61	86	102
1933	109	70	64	80	101
1934	123	90	73	90	117
1935		9			
1923	40.				
Mar. 15	152	143	94	148	143
June 15	153	137	90	169	149
Sept. 15	151	142	94	174	149
Dec. 15	150 .	148	99	159.	143
1924	, , ,	,			
Mar. 15	152	140	. 92	163	146
June 15	150	138	92	168	148
Sept. 15		141	93	171	151
Dec. 15	154	148	96	156	147
100. 10					Continued

Table 1.—Index numbers of farm prices, prices paid by farmers and wages—Cont'd

Year and month	Prices paid by farmers for commodities	Prices received for farm products	Ratio of prices received to prices paid	Farm wages paid to hired labor	Commodities bought for production and farm wages
1925	•				
Mar. 15	158	156	99	163	152
June 15.	158	156	99	169	154
Sept. 15	155	.155	100	173	152
Dec. 15	155	155	100	159	147
1926			**		
Mar. 15	156	149	96	166	151
June 15	156	148	95	174	154
Sept. 15	155	143	92	176	154
Dec. 15	154	135	88.	162	148
1927	. 101	100		102	110
Mar. 15	152	131	86	166	148
June 15	154	138	.90	172	152
Sept. 15	153	148	97	175	153
Dec. 15	152	147	97	161	148
1928	102	121	. 31	101	140
	454	1.45	0.4	100	151
Mar. 15:	154	145	94	166	151
June 15	156	150	96	170	155
Sept. 15	155	149	96	175	153
Dec. 15	. 154	147	95	162	150
1929		2 1 2	i. 11.		1.2.
Mar. 15	155	146	94	167	153
June 15	153	142	93	173	153
Sept. 15		150	97	174	153
Dec. 15	152	147	. 97	159	149
1930				1	
Mar. 15	150	135	90	162	147
June 15	148	131	89.	160	146
Sept. 15	· 144	120	. 83	150	144
Dec. 15	138	104	75	129	134
1931					٠.
Mar. 15	132	97	. 73	127	129
June 15	127	86	68	123	124
Sept. 15	121	80	66	113	116
Dec. 15	117	75	64	98	112
	111	,10	0.4		
			1 1 1 1 1 1 1		ontinued

Table 1.—Index numbers of farm prices, prices paid by farmers and wages—Cont'd

Year and month	Prices paid by farmers for commodities	Prices received for farm products	Ratio of prices received to prices paid	Farm wages paid to hired labor	Commodities bought for production and farm wages
1932				* **	
Mar. 15	112	69	62	94 .	, 108
June 15	108	58	54	. 87	104
Sept. 15	106	66	³ 62	84	/ 100
Dec. 15	103	63	61	. 74	97
1933			-		
Mar. 15	100	55	. 55	73	94
June 15	103	71.	69	78 :	98
Sept. 15	116	80	69	86	107
Dec. 15	116	78	67	81	106
1934					
Mar. 15	120	. 84	70	88	112
June 15	121	85	70	90	114
Sept. 15	126	103	82	90 93 86	120
Dec. 15	126	101	80	86	121
1935					
Mar. 15	127	108	85	94	122
June 15	127	104	82.		
Sept. 15					
Dec. 15		•			* *
1936		14		,	
Mar. 15	2.0				
June 15					
Sept. 15	5 -				
Dec. 15		: · ·			1

Table 2.—Index numbers of prices paid by farmers for commodities used for family maintenance, 1910-1935

Year and month	Food	Clothing	Operating expenses	Furniture and furnish- ings	Building materials for house	All com- modities used for family mainte- nance ¹
1910	95	98 ·	101.	102	101 .	98
1911	99	98	105	100	103	100
1912	100	101	102	100	104	101
1913	99	102	96	100	100	100
1914	107	102	95	97	93	102
1915	110	110	.98	100	100	107
1916	126	130	115	116	114	124
1917	154	155	128	144	133	147
1918	174	207	138	185	160	177
1919	208	253	144 .	200	201	210
1920	207	264	186	229	212	222
1921	140	180	148	198	.158	161
1922	141	173	142	182	165	156
1923	150	180	132	192	168	160
1924	148	183	125	196	168	159
1925	159	182	129	197	172	164
1926	155	180	133	193	172	162
1927	152	177	131	192	172	159
1928	153	181	128	189	169	160
1929	149	177	127	188	170	158
1930	137	167	122	179	166	148
1931	109	142	110	153	149	126
1932 -	90	115	103	128	134	108
1933	95	114	102	126	138	109
1934	108	131	106	136	155	122
1935						à ·
1923					* *	
Mar. 15	151	176	141	189	168	160
June 15	151	179	136	189	171	160
Sept. 15	148	183	126	193	167	160
Dec. 15	148 •	184	122	196	166	159

Table 2.—Index numbers of prices paid by farmers for commodities used for family maintenance, 1910-1935—Cont'd (1910-1914—100)

Year and month	Food	Clothing	Operating expenses	Furniture and furnish- ings	Building materials for house	All com- modities used for family mainte- nance ¹
1924		7				
Mar. 15	148	184	131	194	169	160
June 15	141	181	128	197	167	157
Sept. 15	- 148	182	122	197	168	159
Dec. 15	156	183	. 121	, 198	169	162
1925						1
Mar. 15	162	183	130	197	171 -	166
June 15	159	182	129	197	173	165
Sept. 15	159	181	126.	197	171	163
Dec. 15	156	182	129	197	174	163
1926	·				-	2 - 1
Mar. 15	156	181	132	196	172	162
June 15	157	180	135	194	171	163
Sept. 15	154	179	133	192	171	161
Dec. 15	154	178	132	192	172	161
1927		•				
Mar. 15	152	176	135	190	173	159
June 15	154	176	131	193	173	160
Sept. 15	151	176	132	192	173	159
Dec. 15	150	179	128	191	170	159
1928 .	0.				. 1	
Mar. 15	151	182	129	190	168	160
June 15	158	179	126	189	169	161
Sept. 15	155	181	129	191	169	162
Dec. 15	148	181	128	186	170	159
1929		•				
Mar. 15	148	179	127	189	170	159
June 15	149	177	127	188	172	158
Sept. 15	151	177	127	188	170	159
Dec. 15	147	177	128	_ 188	170	157
					Co	ntinue

Table 2.—Index numbers of prices paid by farmers for commodities used for family maintenance, 1910-1935—Cont'd (1910-1914—100)

Tear and month	Food	Clothing	Operating expenses	Furniture and furnish- ings	Building materials for house	All com- modities used for family mainte- nance 1
1930					٠.	. •
Mar. 15	146	174	125	186	170	155
June 15	144	168	124	184	168	152
Sept. 15	135	164	122	174	163	146
Dec. 15	123	160	119	171	161	140
1931						
Mar. 15	117	153	115	162	155	134
June 15	114	145	110	157	151	129
Sept. 15	106	139	107	149	147	124
Dec. 15	99	132	107	143	143	118
1932						
Mar. 15	94	124	104	136	139	113
June 15	90	116	104	129	136	108
Sept. 15	91	111	103	125	131	106
Dec. 15	85	108	101	122	131	103
1933						
Mar. 15 .	83	102	98	117.	126	99
June 15	92	102	96	120	130	102
Sept. 15	104	125	105	132	• 145	. 117
Dec. 15	100	128	107	134	150	117
1934	100			101		
Mar. 15	104	132	107	135	157	121
June 15	107	131	107	135	158	122
Sept. 15	113	130	.106	137	153	123
Dec. 15	110	130	106	137	152	122
1935					,	
Mar. 15	118	128	106	137	151	124
June 15	121	124	106	136	153	124
Sept. 15		1-1	. 200	100	100	
Dec. 15						
1936		٠.		9		
Mar. 15						
June 15		,		•	,	- :
Sept. 15		- 11		*	-	
Dec. 15				. •		

Automobiles were added to the index in 1917 by making the index of automobile prices equal to the average of the index of farm machinery prices in 1917 and 1918,

Table 3.—Index numbers of prices paid by farmers for commodities used in production, 1910-1935

Teer and month	Ped	Farm machinery	Fer- til- iser	Building materials for other than house	Equip- ment and supplies	Beed ¹	All commod ities used in production
1910	93	102	99	100	101	1 .	98
1911	107	101	99	102	100		103
1912	91	102	100	103	100	103	
1913	107	98	102	101	100	. 97	
1914	102		100	93	99	99	
1915	100	100	112	102	106	120	104
1916	130	107	120	117	129	142	124
1917	184	126	137	137	156	149	151
1918	193	155	170	161	181	190	
1919	211	161	182	189	180	280	
1920	137	167	186	205	189	152	174
1921	97	156	156	156	152	134	
1922	123	142	129	159	.140	130	139
1923	. 134	146	126	161	136	142	141
1924	142	152	120	161	133	151	143
1925	141	153	129	164	140	172	147
1926	137	154	126	162	144	214	146
1927	138	154	121	160	141	197	145
1928	148	154	131	158	138	179	148
1929	145	153	130	159	136	185	147
1930	132	152	126	155	131	174	140
1931	93	150	115	139	116	152	
1932	69	141	. 99	126	107	102	107
1933	79	137	96	129	103	95	108
1934	110	144	104	146	109	140	125
1935			•				. 1
1923						-	
Mar. 15	134	143	124	160	145	142	142
June 15	135	148	128	164	142	138	
Sept. 15	134	147	122	160	131	145	
Dec. 15	132	148	125	159	127	144	
							ontinue

Table 3.—Index numbers of prices paid by farmers for commodities used in production, 1910-1935—Cont'd

Year and month	Feed	Farm machinery	Fer- til- iser	Building materials for other than house	Equipment . and supplies	Beed1	All commod ities used in production
1924						. * .	
Mar. 15	133	150	115	. 162	138	154	
June 15	136	153	117	160	136.	152	
Sept. 15	147	153	123	161	131	148	
Dec. 15	151	152	125	163	127	150	145
1925							
Mar. 15	148	154	128	164	138	170	149
June 15	147	152	130	164	142	174	150
Sept. 15	138		132	164	140	156	
Dec. 15	130	1.3	127	164	141	187	144
1926							
Mar. 15	139	154	125	162	143	218	147
June 15	137	153	130		147	222	
Sept. 15	138	154	125	162	144	215	
Dec. 15	132	154	126	162	141	198	
1927							
Mar. 15	130	154	119	161	144	205	143
June 15	141	154	119	161	140	205	-
Sept. 15	143	155	123	161	140	192	
Dec. 15	137		123	158	138	187	
1928	10.	100	120	100	100		
Mar. 15	145	154	131	156	139	183	146
June 15	159		131		137	183	
Sept. 15	145	154	130	159	137	179	
Dec. 15	144	155	130	159	137	170	
1929		100	100		10.	1,0	421
Mar. 15	151	153	132	160	135	192	149
June 15	141		132	160	136	192	
Sept. 15	147	153	129	159	136	172	
Dec. 15	142	154	129	159	135	185	
1930	142	101	123	109	100	100	140
Mar. 15	134	154	100	150	199	170	140
June 15	135	154 152	126	158	133	176	
Sept. 15	138	152	126 125		132	176	-
Dec. 15	120	152	125	153 150	131 128	176	
200. 10	120	102	120	100	128	168	ontinue

Table 3.—Index numbers of prices paid by farmers for commodities used in production, 1910-1935-Cont'd

Year and month	Feed	Farm machinery	Fer- til- iser	Building materials for other than house	Equip- ment and supplies	Beed	All commod ities used in production
1931						• • •	
Mar. 15	108	151	119	144	124	174	129
June 15	100	150	119	140	114	174	125
Sept. 15	83	150	110	137	114	133	117
Dec. 15	80	148	110	134	114	127	116
1932				•.		1	
Mar. 15	76	144	103	130	111	109	112
June 15	72	142	103	127	106	109	109
Sept. 15	67	140	96	124	106	94	105
Dec. 15	62	139	96	123	104	94	104
1933						. ,	/
Mar. 15	62	135	91	119	100	85	101
June 15	77	135	91	122	97	85	104
Sept. 15	90	139	99	136	106	111	114
Dec. 15	86	140	102	140	108	111	114
1934					**		:- 1/4
Mar. 15	91	'142	104	148	108	119	119
June 15	97	144	104	149	110	115	121
Sept. 15	122	146	105	145 .	109	162	129
Dec. 15	132	146	105	144	110	162	131
1935		. :			- 1		
Mar. 15	128	148	106	143	109	190	131
June 15	122	149	106	145	108	190	
Sept. 15							
Dec. 15	-50			. * *			
1936		e P	•				
Mar. 15	** 1						
June 15							
Sept. 15							
Dec. 15	•				5	3	

 $^{^{1}1912-1914 = 100.}$

Automobiles and trucks were added to the index in 1917 by making the index of automobile and truck prices equal to the average of the index of farm machinery prices in 1917 and 1918. Tractors were added to the index in 1925 by placing the index of tractor prices equal to the average of index of farm machinery prices in 1925 to 1929. These commodities are not included in the farm machinery index.

This statement replaces the statement published in 1928 which described in detail the index of prices paid by farmers. Much additional information regarding farmers' purchases has become available since the former statement was issued. These additional data have been considered in preparing this report and in some instances have resulted in changes in the index numbers of certain groups of commodities. These changes were due to the addition of a few new commodities or to changing weights in a few instances and in part to additional prices for the years prior to 1927.

Data used in the index

The prices used in constructing the index numbers of prices paid by farmers have been collected from approximately 2,000 retail dealers in all parts of the United States by the United States Department of Agriculture. From 1910 to 1922 the prices were collected at the end of the year and dealers were asked to give average prices for the year. Since 1923 the prices have been collected quarterly and current prices were quoted. Changes in the list of commodities have been made from time to time in order to keep the list up to date with changes in farmers' purchases.

In asking for quotations on the different items farmers buy, each item is described as accurately as possible so that each dealer will report on the same commodity. Over the period of years covered, however, several changes have taken place in some of the commodities which could not be taken into account in collecting prices. As illustrations, the automobile, many items of farm machinery, furniture, etc., have had changes in design, quality and adaptability which could not be accurately described in the questionnaire used in collecting prices. Wherever possible these changes have been allowed for by asking for quotations on both the old and new item at the time the change was made. In many cases, however, this is impossible, as when automobile or machinery models are changed and the new model replaces the old. In such instances the practice in price collecting has been to obtain prices on a given size and type of machine.

As an example, prices have been collected throughout the period 1917-1932 on given makes and models of cars, but no allowance was made for changes in design, quality, etc. Thus the prices used represent the amount required to purchase a given machine at any period of time whether or not the usefulness of the machine has increased or decreased during the period for which prices have been collected.

Whenever possible quantity weights have been taken from official sources. The weights for the different commodities bought for family maintenance were determined from farm costs of living studies in various parts of the .United States, from 1920 to 1929.1 In a few cases studies of earlier period 2 were referred to and in a few instances where no data were available estimates had to be made. The quantity weights of purchases have been adjusted to a per family or per farm basis, as the measure of the data used in determining weights were collected with the farm or the family as a unit.

The weights for commodities bought for use in production represent average farmers' purchases in the years 1924 to 1929. In some cases the censuses of 1924 and 1929 were largely drawn upon for weights.8 For some commodities annual census data were available and in a few cases estimates of farmers' expenditures made by the Department of Agriculture were used as a base for weights.

The base period

One of the most important uses to be made of the index numbers of prices paid by farmers is to compare the prices. paid with the prices received for farm products. Con-

^{&#}x27;A large number of the studies are explained in detail in United States Department of Agriculture Bulletin No. 1466, "The Farmer's Standard of Living".

[&]quot;United States Department of Agriculture Bulletin 410, "The Value to Farm Families of Food, Fuel, and Use of the House," by W. C. Funk.

The farm census of both 1924 and 1929 shows farmers' expenditures for feed and fertilizer and the 1924 census shows expenditures for building management. terials.

Annual reports of the Bureau of the Census on Manufacture of farm equipment, 1924-1929.

sequently, it is desirable to have the same base period for the two sets of index numbers. At present there is great disparity between the level of prices paid by farmers and the level of prices of farm products. This points to the need of using a period of fairly stable price relations as a base period. The recently enacted Agricultural Adjustment Act of 1933 requires the use of a pre-war base period in the administration of the Act. Therefore, the pre-war base 1910-1914 is continued in use.

In the case of agricultural commodities no one year is satisfactory as a base period for the reason that in any year one or more of the agricultural commodities is likely to be in an abnormal relationship to the others. Over a period of years there is a normal relationship among the prices of the several agriculturally produced commodities. There is also a normal relationship among the nonagricultural commodities over a period of years. The base period should be long enough, therefore, to eliminate most of these abnormal relationships due to changes in production or other causes of annual or short-time variations.

Another important point to consider in determining the base period for index numbers is the stability of the relationship between prices that are likely to be compared. Prices of commodities differ greatly in their response to changing economic conditions. The prices of raw materials in a freely competitive market change quickly with changes in economic conditions, whereas the prices of most manufactured goods change slowly. The relationship between the prices of raw materials and manufactured goods is, therefore, unstable through periods of marked changes in the general price level and for some time after such periods until normal relations can be reestablished. Another test is the relationship of the trends of groups of prices that are likely to be compared. A good base period would be characterized by small variability and by approximately parallel trends of prices of groups of commodities to be compared. Such price conditions would indicate fairly stable economic conditions in the industries the prices of the products of which are to be compared.

Method of construction

The method of constructing the index numbers of prices paid by farmers for commodities they buy is as nearly as possible the same as that used in constructing the index numbers of prices farmers receive for the products which they sell. In the case of these index numbers, as in the case of index of farm prices, post-war weights are applied to pre-war prices. It is only since 1920 that expenditures of the farmer have been studied closely enough to provide a measure of the different commodities he buys each year. Furthermore, by using weights applicable to a reasonably recent period the index number furnishes a more accurate measure of the actual change in the level of prices in recent years. This is more important in the case of index numbers of prices paid by farmets than in the index numbers of prices received for farm products, because changes in the quantities of the different goods farmers purchase have been more pronounced in the last 20 years than have changes in the quantities of farm products produced.

The first step in constructing the index number for each group of commodities as shown in Tables 1 and 2 was to multiply the prices of the different commodities in each group for the different periods of time by the fixed weights for each commodity. These values of the different commodities for each period of time were then added giving an aggregate of actual prices for each group of commodities. The aggregates were then expressed as a percentage of the average of the aggregates for the years 1910 to 1914. This type of index number construction is an aggregate of actual prices reduced to relatives of a given base period. After determining an index for each group by this manner, the index numbers of the different groups were combined by weighting each group according to its relative importance in the budget of all commodities bought for family maintenance or for use in production and the sum divided by the sum of the weights.

It was impossible to obtain samples which represented an equal proportion of the total expenditures for each group because of the difficulty of standardizing commodities in some of the groups. The value of the commodities included in the clothing group is only about 55 percent of the total amount spent for clothing a year, while the value of commodities included in the food group is over 90 percent of the total amount spent for food. A combination of the aggregates of price times weight for the commodities in the food and clothing groups would, therefore, weight food far more heavily than clothing. This disproportionate representation was corrected by weighting each group in the budget according to its relative importance to the total family expenditures, thus combining the indexes of the several groups by the average of relatives method instead of combining the aggregates.5

The introduction of new commodities

It is planned to keep the list of commodities which are used in the index number as nearly representative of farmers' purchases as possible. As farmers' purchases change over a long period of time it is, therefore, necessary to change the commodities for which prices are gathered. Whereas farmers used to buy high pressure cord tires for their cars they are now buying balloon tires. This change in purchases made it necessary to drop cord tires from the index and add balloon tires. In addition, farmers cease to buy certain commodities and buy others to replace them, such as automobiles for buggies. This necessitates substituting one commodity for another in the index if the group of commodities in the index is to be representative of farmers' purchases at all times. When substitutions are made in the list of commodities purchased or new commodities are added to the list, the price of the commodity added is given the same relationship to prices in the base period

⁵The relative importance of each group of commodities as shown in the farm budget on pages 27 and 28.

as have the other commodities in the group to which it is added. As an illustration, rayon goods have recently become an important item of clothing and were added to the clothing index in June 1930. No prices were available for the rayon goods in the base period 1910-1914 but they were added to the index of clothing in June 1930 when the level of prices was 168 percent of the base period. By dividing the value of rayon goods in June 1930 by 168, the level of clothing prices, and adding the result to the base aggregate for clothing a new base aggregate was obtained, which was then used in computing the index number in following periods.

The question often arises, when should a new commodity be introduced into an index number? By some it is maintained that it should be introduced as soon as it is available for purchase, others maintain that it should not be introduced until it has become an established commodity on the market and its price tends to fluctuate along with the prices of similar commodities. Still others maintain that a new commodity should be introduced as soon as it is available but that the weight should be gradually increased as the commodity becomes more common. Different methods of introducing a commodity into an index are used in different index numbers published in the United States. The method followed in constructing the index numbers of prices paid by farmers was to introduce a new commodity into the index when it was commonly purchased and when its prices tended to fluctuate with the prices of similar commodities. The policy of adding new commodities at the level of prices of similar commodities in the index, makes it all the more essential that new commodities should not be added to the index until their prices have become stabilized. For example, automobile prices were not introduced until 1917. From 1910 to 1917 prices of automobiles were going down, while prices of most other commodities in 1917 were materially higher than they were in 1910. After 1917, prices of automobiles tended to fluctuate along with the prices of other commodities. If automobiles had been introduced into the

index in the base period (1910-1914) when they were relatively high in comparison with other commodities, the index of automobile prices in recent years would be somewhat below the pre-war price level. As automobiles have become an important commodity in the farmers' purchases, such a method of introducing automobiles into an index would make the index somewhat lower in recent years than it now is. This illustration shows how the continued practice of introducing new commodities into the index before their prices have become adjusted to competitive conditions tends to give a downward trend to the index of prices over a long period of time. The early introduction of a commodity into the index tends to distort a comparison of the index at one period of time with that of some other period.

Weights and commodities used

The following tables show the items which were selected as representative of each group of commodities, the weights given to each item, and the value of the commodities according to prices in 1928. The year 1928 was selected as the year of most stable prices and thus best shows the relative importance of the different commodities in the different groups. Some commodities, such as automobile expenses and kerosene which are used both for family maintenance and for production, are included in two different groups. It was assumed that the use of the automobile is divided equally between the family and for production purposes. Thus one half of the weight assigned to automobiles is included in the index of prices paid for family maintenance, and one half is included in the index of prices paid for production goods.

Table 4.—Food: Annual purchases per average farm family

Item	Unit	Amount purchased	Price paid by farmers 1928	Value in 1928
			Dollars	Dollars
Flour, white	24-pound sack	36	1.15	41.40
Bread, white	pound	75	.1065	7.99
Cornmeal		70	.043	3.01
Butter		30	.493	14.79
Lard		22.	181	3.98
Bacor		18	.319	5.74
Beef, fresh	. 11	104	.277	28.81
Pork, fresh	. "	48	.251	12.05
Sugar		369	.072	26.57
Rice	44	- 23	088	2.02
Coffee		39	.440	17.16
Tea		.7	.712	4.98
Oranges	dozen		.532	4.26
Lemons		8 5	.447	2.24
Bananas		12	.370	4.44
Apples		144	.072	10.37
Oatmeal, bulk,		40	.056	2.24
Vinegar	gallon	. 4	412	1.65
Salt		. 58	.021	1.22
Raisins	_ pound	10	.124	1.24
Cheese	- 1.4 11	10	.372	3.72
Soda	- "	15	.082	1.23

The weights for the items of food listed in the accompanying table were obtained from a study of the consumption of food by farm families in selected areas of 14 different states in 1913 and 1914,6 a study made in six different states of selected areas in 1922 to 1924,7 and unpublished data available in the Department of Agriculture which has been collected since 1924. A comparison of the average annual consumption per farm family for the different periods

From schedules gathered by Dr. Kirkpatrick, Division of Farm Population and Rural Life, Bureau of Agricultural Economics. The data for Ohio, Kansas, and Kentucky were summarized by the Bureau of Home Economics. The data

for South Carolina and Vermont were taken from the actual schedules.

^{&#}x27;U. S. D. A. Bulletin 410 "The Value to Farm Families of Food, Fuel and Use of the House" by W. C. Funk. The study included 950 families in the following States: Maine, Vermont, New York, Pennsylvania, New Jersey, North Carolina, Georgia, Texas, Ohio, Wisconsin, Iowa, Kansas, North Dakota, and California.

showed very little change in consumption habits from 1913 to 1930.

The amount of clothing bought by the average farm family in a year was obtained from data gathered by the Division of Farm Population and Rural Life, Bureau of Agricultural Economics, in Ohio, Kentucky, Missouri, Kansas, South Carolina, and Vermont. In these studies approximately 2,000 families were interviewed in the six States, and the average annual purchase of clothing by each member of the family was determined. The consumption per family was found by weighting each individual's purchases according to their number in the average family and adding the sum of the weights. The weights shown in Table 5 have been checked against more recent data collected in other areas and found to be representative.

The number of persons in the average farm family in this study was: husband .94, wife .95, son over 24 .075, daughter over 24 .064, son 19-24 .12, daughter 19-24 .09, son 15-18 .19, daughter 15-18 .15, son 12-14 .13, daughter 12-14 .15, son 6-11 .26, daughter 6-11 .23. The clothes bought for children 6-11 years old were given only half weight.

Table 5.—Clothing: Annual purchases per average farm family

Item	Unit	Amount purchased	Price paid by farmers 1928	Value in 1928
. 0.	. ,	. ',	Dollars	Dollar
Felt hats, men's	each	1.34	3.89	5.21
Men's suits, ready-made,	1			
serge, wool	44	.77	26.28	20.24
Extra trousers, fabrics				
woolen	per pair	1.07	5.04	5.39
Overalls		5.02	1.60	8.03
Men's work shirts	each	7.31	.934	6.83
Men's work socks, cotton	per pair	13.00	.178	2.31
Men's work shoes	E 11 . 11	3.55	3.65	12.96
Cotton gloves	144 44	10,00	.188	1.88
Men's athletic union suits	each	2.52	.97	2.44
Men's heavy winter union				
suits	4.6	1.84	1.77	3.26
Knee rubber boots	per pair	.52	4.30	2.24
Gingham	" yard	7.62	.209	1.59
Muslin		10.63	.169-	. 1.80
House dresses	each	5.14	1.38	7.09
Women's silk hose	per pair	4.20	1.21	5.08
Women's shoes or oxfords		3.46	4.16	14.39
Rayon bloomers'	66 66	3.00	.80	2.40

¹ Price quoted is average for 1930.

Table 6.—Operating expenses: Annual purchases per average farm family

		1 4 4		
. Item	Unit	Amount purchased	Price paid by farmers 1928	Value in 1928
7	•	1	Dollars	Dollari
Hard coal	ton	.43	16.94	7.28
Soft coal	44	2.46	8.90	21.89
Wood	cord	1.13	7.41	8.37
Kerosene	gallon	61.6	1.785	11.00
Gasoline	"	80.9	.212	17.15
Soap, laundry	bar	53.0	.050	2.65
Soap, toilet	66 .	42.0	.050	2.10
Starch, laundry	box	6.5	.100	.65
Brooms	each	2.3	.728	1.67
Auto tires, 29 x 4.40	44	.73	9.60	7.01
Cylinder oil	gallon	. 5.4	.820	4.43

Table 7.—Furniture and furnishings: Annual purchases . per average farm family

Item	Unit	Amount purchased	Price paid by farmers 1928	Value in 1928
		. 1	Dollars	Dollars
Rugs, 9 x 12 ft. Axminster	each	.067	27.17	1.82
Linoleum, 6 ft. width	running yd.	.8	1.60	1.28
Chairs, dining, wood seats	<i>P</i> .			
and backs	each o	7	2.74	1.92
Table, extension dining,				1
top 42 x 54	.44	.1	24.73	2.47
Davenports, duofold type	44	.05	68.28	3.41
Dresser with mirror, 42-				
in. top	66	.1 .	24.51	2.45
Kitchen cabinets	- 66	.05	38.18	1.91
Bedsteads, metal double	44	2	9.78	1.96
Bedsprings, double sagless	. 66	.2	8.84	1.77
Mattresses, full size and				-
felted cotton		.2	13.01	2.60
Blankets, cotton double		.5	2.54	1.27
Sheeting	vard	3.0	.515	1.54
Comforters	each	.25	3.32	.83
Stoves, kitchen range	. 11	.12	88.29	10.59
Sewing machines, duofold	91		00.20	10.00
type	- 44	.02	49.48	.99
Wash boiler galvanized		.02	20.20	
copper bottom	66	.1	3.32	33
Wringer elether	44	.1	5.70	.57
Wringer, clothes			0.10	.0:
Washing machines, hand-	44	.1	18.89	1.89
power Dinner plates		1.0	1.015	1.02
	½ doz.		1.004	.50
Fruit jars, mason—1 qt Toweling		.5 6.0	.194	1.16
Towelling	yard	0.0	.134	1.10

The weights for furniture and furnishings were taken from data obtained from the same families as were the clothing weights, and checked with the furniture and furnishings bought by working men's families in cities. Several items are weighted so as to represent other items of a similar nature. The weight for kitchen ranges represents all stoves, dinner plates were given extra weight to represent all dishes and dining room chairs to represent all straight chairs.

The weights for fuel and laundry supplies which are included in operating expenses were also obtained largely from studies made on the cost of living for farm families in various sections of the United States. The weights for gasoline, tires and cylinder oil have been derived from several sources where detailed records were kept on farmers' expenditures on automobiles during the years between 1924 and 1929.

Formerly, automobiles were included in the index of operation expenses, but since fluctuations in automobile prices are not similar to those of other commodities of this group automobiles have not been included in the index of operating expenses but they are still included as a part of the index of commodities bought for family maintenance. The average annual purchases of automobiles have been estimated from census enumerations of automobiles on farms and automobile registrations in the principal agricultural states. The purchase of the different types of automobiles on farms was arrived at from studies made by the Farm Journal on farmers' purchases of automobiles.¹⁰

Table 8.—Automobiles: One-half of the average annual purchases per farm

	Item*			Amount Pur- chased per average farm family	Price paid by farmers in 1928	.•	Value in 1928
			. 0)	Dollars		Dollars
4-cylinder	coach	400-550	class	0.022	526		11.57
4-cylinder				.022	603		13.27
6-cylinder				.008	1.632		13.06

^{&#}x27;It is estimated that one-half of the use of the automobile is for the farm family and one-half for production purposes.

^{*}United States Bureau of Labor Statistics Bulletin 357, pp. 392-401.

*"('Farm automobiles and accessories') by Farm Journal in 1925 and subsequent reports.

The description of automobiles has to be changed from year to year to insure price quotations on comparable models and types of cars. The description given here applies to cars for which prices were collected in 1929.

No data were available which showed the purchases of building materials by farmers. The weights for building materials as shown in table 9 were obtained by drawing up plans for four different houses and determining the bill of lumber that would be required to build each house. One type of house was taken as representative of the average farm house in the North Central and Northeastern States. It was estimated that the average life of a house in this area was fifty years. An allowance was made for its being painted every 7 years and re-shingled once. According to these assumptions the average amount of building materials bought by farmers in this area is 2 percent of the amount used in a house, for shingles 4 percent, and paint 7 percent. Plants for an average house in the Western States were also drawn up and one-fortieth of the lumber bill taken as the amount bought per year. For the South the plan represents a tenant's house for rented farms and a 20-year life was assumed with no allowance for paint or reshingling. Plans for a house were also drawn up for the owner-operator in the South and one-fortieth of this was taken as the annual lumber purchased. Each bill of lumber was then weighted according to the number of farms each plan represented and the average per farm used as weights. Although there is a marked cycle in building activity on farms, this was necessarily ignored in determining the weights for building materials. The weights given here represent the amount of building materials that must be bought each year over a long period of time to maintain a set of farm buildings on each farm equal to the buildings on the average farm at the present time.

Table 9.—Building materials for house: Annual purchases per average farm family

Item	Unit	Amount	Price paid by farmers in 1928	Value in 1928
			Dollars	Dollars
2 x 6—16	Bd. ft.	48	41.78	2.01
2 x 6—16		15	43.86	.66
Yellow pine flooring T &				
G	44 44	27	69.93	1.89
Common boards No. 2	. 44 44	43	40.28	1.73
Shiplap—8 in.	11 31 .	40	45.51	1.82
Shingles	M.	.5	5.84	2.92
Windows 24 x 28 lt. com-				
plete with frame	Each	.2	6.55	1.31
Doors 2' 8" x 6' 8"-4			0.00	1.01
panel.	***	.2	4.28	.86
Lath	Bunch	1.5	.496	.74
Screening, 30 in.	Ft.	5.0	.085	42
Nails, 8 d	Lb.	6.0	.057	.34
Bricks, common	Thousand		21.88	2.19
Cement	Sack	1	.812	.81
Coden siding	Bd. ft.	50	58.92	2.95
Cedar sidingPaint				
raint	Gal.	1.5	3.46	5.19

The weights for commercial feeds are based on data collected by the Bureau of Agricultural Economics which show the annual disappearance of by-product feeds in the United States. The average annual disappearance for the years 1924 to 1929 was divided by the number of farmers in the United States to obtain the average amount purchased per farm with some allowance being made for feed purchased for animals not on farms.

Table 10.—Feed: Average annual purchases per farm, 1924-1929

Item	Unit	Amount purchased	Price paid by farmers in 1928	Value in 1928
	31,	,	Dollars	Dollars
Corn	Bushel	24.0	0.899	21.58
Oats		7.5	.488	3.66
Hay, alfalfa	Ton	8	21.72	17.38
Corn, gluten	100 lb.	1.7	2.54	4.32
Cottonseed meal		5.1	2.88	14.69
Linseed meal		1.2	3.18	3.82
Bran	46 66	6.6	1.99	13.13
Middlings		6.4	2.25	14.40
Mixed dairy feed-	" "	4.0	2.56	10.24
Cornmeal	46 46 4	4.5	2.52	11.34
Tankage		.6	4.11	2.47
Rock salt		1.5	1.02	1.53

The amount of rock salt used by farmers was estimated by weighting the amount of salt necessary for the various kinds of farm animals by the average number of animals on farms 1924-1929, and then divided by the total number of farms. The weight given to alfalfa hay repre ents the amount of all hay bought by farmers. Alfalfa hay was used to represent all hay purchased by farmers because it is now the most common kind of hay purchased and is sold in nearly all areas of the United States. The weight for alfalfa hay was arrived at from shipments of hay out of the county where grown in 1930 and 1931, the only years given, with some allowance for hay sold within the county and some allowance for hay consumed by animals not on farms.

The weights for corn and oats were found by taking the amounts sold, or to be sold by farmers, from the 1924-1929 crops and deducting from this the amount that was exported, the amounts that went into commercial channels and estimates of the amount that was fed to animals not on farms.

The weights for machinery were determined from the

average annual sales of farm machinery in the United States 1924-1929.11

Table 11.—Farm machinery: Average annual purchases per farm 1924-29

Item	Amount purchased	Price.	Value in -1928
		Dollars	Dollar
Corn planter, 2-row check	0.011	79.80	.878
Grain drill, disk type	.008	147.56	1.180
Walking plow, 2-horse	.022	22.63	.498
Walking plow, 1-horse	026	12.80	.333
Plow 2-bottom horse drawn		112.18	1.122
Disk harrow single 7-foot	.017	66.15	1.125
Spike-tooth harrow 3-section	.020.	33.24	.665
Cultivator 1-row riding	.025	59.20	1.480
Cultivator 1-horse five shovel	.020	9.07	.181
Grain binder 7-foot	.011	234.54	2.580
Potato digger, elevator type	.0015	136.44	.205
Mower 5-foot	.016	82.90	1.326
rtake, sulky	.010	46.86	.469
Grain thresher, steel 46-in. rear	.0017.	1,257.00	2.137
Feed grinder power	.007	49.15	.344
Gas engine 3 h.p.	.017	102.21	1.738
Manure spreaders	.010	166.98	1.670
Incubator 250 egg capacity	.021	3.509	.737
Ensilage cutter, 16-in. blade		313.63	.408
Cream separators, 250-qt. capacity		93.76	2.532
Farm wagon complete	.014	*135.50°	1.897

Table 12.—Automobiles and trucks¹: Average annual purchases per farm for use in production 1924-29

	Item*		Amount	Prices paid by farmers in 1928	Value in 1928
	F.			Dollars	Dollars
4-cylinder co	ach 400-5	50 class	0.022	526	11.57
4-cylinder co			.022	603	13.27
6-cylinder se			.008	1,632	13.06
1 ton truck-			.022	720	15.84

^{&#}x27;Includes one-half of expenditures for automobiles and all expenditures for trucks.

¹¹ Census of Manufactures—Sale and Manufacture of Farm Equipment.

The description of automobiles has to be changed from year-to-year, to insure price quotations on comparable models and types of cars. The description given here applies to cars for which prices were collected in 1928.

Table 13.—Tractors: Average annual purchases per farm 1924-29

Item		Amount	Prices paid by farmers in 1928	Value in 1928
			Dollars	Dollars
8-16 H.P. tracto	r	0.01	. 868	8.68
10-20 H.P. tracto		005	896	4.48
15-30 H.P. tracto		,005	1.140	5.70

Farmers are the only purchasers of several types of farm machinery and for these types average annual sales in the United States were used as weights. A few farm machines such as tractors, incubators, et cetera, are used for other purposes than agriculture and allowances were made for use of these items in other industries.

The weights for automobiles and trucks were arrived at by applying depreciation rates to the numbers of such vehicles on farms according to the censuses of 1925 and 1930. The above types of cars and trucks were chosen to represent all types bought by farmers. Estimates from several sources were used to determine the relationship between farm expenditures for automobiles for business use and for family living. In most studies it was found that the use of the automobile was equally divided between the use for the family and use for production purposes.

The amount of lumber and other materials needed to construct the outbuildings on farms was found in the same way as the amount of building materials needed to construct the house. The average purchases per year was then determined by applying depreciation rates to these buildings as in the case of the house. The weights for gates, windmills, fence posts, and wire were taken from data collected in the Census of Manufactures, and by the United States Department of Agriculture Bulletin Number 321, on the cost of fencing farms in the North Central States. The weight for paint was largely collected from data taken from the Farm Journal.¹²

[&]quot;"Paint on Farms", 1924, Farm Journal Survey.

Table 14.—Building materials: Annual amount purchased per farm

	Item	Unit	Amount purchased	Price	Value in 1928
	. 212			Dollars	Dollars
2 x 6 x 1	6 (also represen	ts			
	r of smaller d			· · ·	
			149	41.78	6.23
2 x 10	ons) x 16 (alsø repr	'e-'			
	all framing lur				
	larger dimension				1
	2 x 6)	Bd. ft.	43	43.86	5 1.89
	n rough boards.		- 111	40.28	4.47
	ding		- 83	58.92	:4.89
	-8 in.		51	45.51	2.32
	3	Thousand	1 2.8	5.84	16,35
Window	78 9 x 12-4 lt.	Each		1.09	93
Bricks,	common	Thousand	.081	21.88	1.77
Portlan	d Cement	Sack	3.	.812	2.44
	, composition 3 p		2 .	3,03	.61
Roofing	steel, galvanize	ed	* 1		
21/2	inch, corrugate	d,	- 1		7.
29 ga	uge	100 sq. ft		5.49	.92
Paint,	outside ready-		\		
mixed		Gallon	2.4	3.46	8.30
	d wire	Pound	16.	.057	91
	iron, hand-pow		.1.	15.13	1.51
	galvanized, wi	re .	40	a's an :	
	teel 12 ft.	- "	.16	11.12	1.78
	nce posts		6.	.403	2.42
	fence posts	(4			
in.)			6.	.286	1.72
	ills, without tow		.01	56.68	.57
	netting, 5 x 1	50	1/10	E 075	= 09
ft		_ Bale	1.0	5,975	5.98
Barbed	wire, galvanized	d_ Rod	.45	4.73	2.13

Table 15.—Equipment and supplies: Annual purchases per average farm

	•			
. Item .	Unit	Amount purchased	Price	Value in 1928
			Dollars	Dollars
Binder twine	pound	48.0	.142	6.82
Horse collars	each	.92	5.78	5.32
Horse blankets	44	.3	5.25	1.58
Milk cans, 10 gallon		.5	4.79	2.40
Rope, manila	pound	14.7	.314	4.62
Automobile tires, 29 x 44	each	.73	9.60	7.01
Gasoline	gallon	72.0	.212	15.26
Kerosene	11.	15.0	.1785	2.68
Cylinder oil	· is	5.4	:820	4.43
Machine oil	44	1.6	.603	.96
Hoes	each	1.25	1.02	1.28
Pitchforks, 3 tine	11	1.25	1.34	1.68
Bushel baskets (wood)	dozen	1.0	1.92	1.92
Lead arsenate	pound	4.7	.274	1.29
Pipe galvanized iron, 2 in.	foot	8.0	.291	2.33
Milk paik	each	.5	.430	.22
Axe	11	1.0		
Grain sacks	***	1.0	1	
Halters	44	.5	1	1945
Harness,	46	.172	1:00	

The weights for equipment and supplies, which are shown in the above table, were arrived at from a variety of sources such as the United States Census of Manufactures, farm surveys and weights used by the War Industries Board.

The number of items which could be included in this group is so large that it was advisable in some cases to weight certain items so as to also represent other items of a similar nature rather than to make the list of items unduly large. This was also done in a few instances to get a more uniform quotation on certain types of commodities. For example, the kind of harness used in different localities of the United States varies widely and is difficult to describe accurately; therefore, horse collars were weighted heavily enough to include the amount spent for harness.

Wooden bushel baskets were weighted to represent all containers of similar construction, lead arsenate to represent all poisons and galvanized iron pipe to represent price changes in other steel materials such as hog troughs, water tanks, etc.

The amount of fertilizer sold in the United States annually is fairly definitely known from estimates made by the National Fertilizer Association 18 and from data collected by the census. The weights for the different fertilizers and fertilizer materials were determined primarily from data gathered by the National Fertilizer Association from their members and correspondents. Upon consultation with statisticians of the National Fertilizer Association as to types and weights to be used, certain of the more common mixed fertilizers were shown to represent all mixed fertilizers as they are typical of fertilizers used on tobacco, potatoes, cotton and truck crops, and had the largest sales during the years 1924 to 1929. Each combination was weighted according to the total tonnage of the combinations of which they were most representative and the total tonnage of all fertilizers and fertilizer ingredients approximate the estimates of total tonnage of fertilizer used in the United States, with some allowance for fertilizer used on gardens and lawns in cities.

¹³ American Fertilizer Handbook.

Table 16.—Fertilizer materials: Annual purchases for average farm

	Item	Unit	Amount purchased	Prices paid by farmers in 1928	Value in 1928
				Dollars	Dollars
Commercial	fertilizer-3-8-3	ton	0.469	32:47	15.23
Commercial	fertilizer-5-8-7	66	.102	41.44	4.23
	fertilizer-2-10-2	46	143	31.18	4.46
Acid phosph	ate 16 percent		244	22.30	5.44
	xda	6.6	.052	63.14	3.28
	ammonia	6.6	.016	65.98	1.06
	neal	6.6	.04	57.65	2.31
	otash	66	.008	51.92	42
Kainit		. 66	.028	1.86	.52
Ground lim	estone	- 66	.205	4.94	1.01

The weights for seed, except cotton and potatoes, shown in Table 17 were derived from the average production plus imports, less exports of these seeds from 1924 to 1929, with some allowance being made for farmers who produce their own seed. From studies made in the Bureau of Agricultural Economics, on the amount of cottonseed bought it has been estimated that farmers in the South buy about 18 percent of their seed each year. The usual planting is about a bushel to the acre of seed. The weight for cottonseed was found by taking 18 percent of the average acreage in cotton from 1924 to 1929, allowing I bushel per acre for seed, and dividing this amount of seed by the average number of farmers in the United States. No definite estimates are made of the amount of certified potato seed sold annually; but from data available it is estimated that it ranges from 6,000,000 to 7,000,000 bushels annually as there are approximately 6,300,000 farmers in the United States and it is estimated that the average of farmers' purchases was approximately 1 bashel per year.

Table 17.—Seed: Annual purchases for average farm

Item	Unit	Amount purchased P	rice	Value in 1928
			ollars	Dollars
Alfalfa seed	pound	. 9 0	.272	2.45
Red clover seed	"	10	.332	3.32
Sweet clover	44	8	.109	.87
Timothy	4.4	11	.0692	.76
Bluegrass	66	3	.336	1.01
Cottonseed	bushel.	1.1 3	.50	3.85
Seed potatoes		1.0 2	.40	2.40

Farm Budgets

The relative importance of each of the different groups of commodities used for family maintenance was determined by the uses of a representative farm budget which shows how much the average farmer spends for commodities in each group in an average year. Studies made by the Division of Farm Population and Rural Life14 and other unpublished material collected by the Department of Home Economics, which analyzed the expenses of several thousand families in different states well distributed over the entire United States, were used to arrive at a representative budget of expenditures for family maintenance. The data for these studies were gathered between January, 1922 and December, 1930. The budget and relative weights for the grouped index numbers are given on the following page. The budget represents the value of goods bought at the price level prevailing in the years 1924 to 1929.

[&]quot;The Farmers' Standard of Living, United States Department of Agriculture Bulletin No. 1466.

Item	Annual expenditure	Percentage of total
	Dollars	Percent
Food	218	35.9
Clothing	185	30.4
Operating expenses	86	14.1
Furniture and furnishings	36	5.9
Building materials for house	se * 45.	7.4
Automobiles **	38	6.3
	608	100.0

* Based on estimate of value of the average farm house when new, at \$1,800 and lasting 40 years.

** Based on the depreciation rates applied to the number of automobiles on farms according to the 1925 and 1930 censuses.

It was necessary to calculate a budget for determining the relative importance of the commodity groups entering into production from farm management studies and census material as no detailed studies have been made which used the same classification of commodities as was used in constructing the index number of commodities used in production:

The amounts spent annually for feed and fertilizer were determined from the 1925 and 1930 Agricultural Census and other studies that have been made in the Bureau of Agricultural Economics. An estimate was made of the amount spent for building materials other than lumber from farm surveys made in several states during the years 1922-1924. This was added to the amount spent for lumber as determined from depreciation rates applied to plans of typical farm buildings other than the house, making a total of \$74 for outbuildings and fences. The estimate of \$52 as the average amount spent annually for farm machinery was determined from data collected annually from the Census of Manufactures for the years 1924 to 1929 on the value of farm machinery sold in the United States. The estimate of the amount spent for automobiles and trucks was arrived at by applying depreciation rates to the cost of automobiles on farms and surveys made to determine the amount spent

by farmers annually for automobiles. Assuming that automobiles are used for the farm business 50 percent of the time and that trucks are used exclusively in production, the total amount spent for automobiles and trucks to be used in production is approximately \$56.

The amount spent for equipment and supplies was found by estimating the amount spent for different items falling in that group. Most of the data used were taken from farm surveys. The following budget shows approximately the average amount spent per farm at 1928 prices:

Fuel and oil for tractor ar	id gas en	gines	\$17.00
Gasoline, oil and tires for	car (1/2	of total):	34.00
Harness			8.00
Twine and rope	. 3		9.00
Milk cans, troughs, etc.		*	5.00
Insect poison			2.00
Containers			8.00
Tools		-	3.00
Total per farm	1		\$86.00
rotal per larm			φου.υυ

The value of seed purchased is the average of the total value of seeds produced and imported less exports for the years 1924-29, plus estimates of the amount of seed potatoes, cotton, corn, etc. bought by farmers. Prices paid by farmers were used when obtainable, otherwise an adjustment was made to the wholesale price for cost of transportation, retailing, etc.

The budget arrived at from the above conclusions and the weights used for the different groups of commodities used to make up the index of commodities bought to be used in production are shown in the following table. The budget has been adjusted to price levels prevailing in the period 1924-29, to correspond with the budget of commodities bought for family maintenance.

Item	Annual expenditure	Percentage of total
	Dollars	Percent
Feed	126	27.0
Machinery	52	11.2
Automobiles and trucks	56	12.0
Tractors	15	3.2
Fertilizer	40	8.6
Building materials	74	15.9
Equipment and supplies	86	18.5
Seed	17	3.6
	466	100.0

The combined index number of prices paid by farmers for commodities, as shown in table 1 was arrived at by weighting the index of commodities used for family maintenance by 608 or the amount of the budget for family maintenance and the index of commodities used in production by 466 or the amount of the above budget and dividing the result by 1,074, the sum of the two weights. Prices of commodities purchased for use in production are combined with wages paid for hired labor by weighting the former by 466 and the latter by 143, the average annual expenditure for labor and dividing the result by 609, the sum of the two weights.

EXHIBIT 18.

United States Department of Agriculture

Bureau of Agricultural Economics

Wholesale Price Received by Farmers for Whole Milk, 1909-1936*

The collection of reliable milk-price statistics has not kept pace with the rapid development of milk production into one of the principal sources of cash income for farmers. The recent depression, with its hardships on producers and consumers alike, was a potent factor in a renewed interest in the subject of milk prices.

^{*}Collected and prepared by Bonald E. Johnson, Asst. Agricultural Statistician, Division of Crop and Livestock Estimates.

This report contains estimates of average prices received by farmers for all whole milk sold at wholesale for all purposes for 27 years. The data are shown by Geographic Divisions and States for the period, August 1909 to December 1936.

NECESSITY FOR ADEQUATE PRICE SERIES

The Agricultural Adjustment Act of 1933 recognized milk as a basic commodity. For the proper evaluation of this important source of farm income, for use in developing marketing agreements, and for comparative purposes, it became imperative that adequate data be available on wholesale prices received by farmers for milk, by States and for the United States, over a long period of years.

INADEQUACIES IN EARLIER SERIES

Previously the only available series showing prices received by farmers for all milk sold at wholesale in the various States were those based on data collected by the Bureau of Agricultural Economics on a general price questionnaire. Milk-price data collected by this method before August 1923 were not on a comparable basis with those collected after that date, and even after 1923 the principal milk dealers and manufacturing plants had frequently not been included in the list of correspondents.

An attempt had been made in 1932 to put the entire series of United States average prices beginning with pre-war days on a comparable basis. This revamped series, together with a detailed discussion of its merits and limitations, was released in 1934. But comprehensive series of average wholesale prices received by farmers for all milk since pre-war days had been prepared only for Massachusetts, Pennsylvania, and Wisconsin.

ADDITIONAL PRICE DATA COLLECTED

In an attempt to remedy this statistical situation, field investigations were made from October 1934 to August 1936. Information regarding average prices paid for milk

during the recent preceding months were obtained for certain markets from the Dairy Section of the Agricultural Adjustment Administration. Other data, available in libraries and in the files of the Department of Agriculture in Washington, consisted mainly of prices paid for base milk of standard butterfat content; they were useful only Milk Market Administrators, State and as check "data. local Milk Control Boards, Cooperative Milk Marketing Associations, dealers and managers of milk-products plants in the principal markets of each State cooperated by furnishing historical milk-price data. Records for some of the early years were somewhat meager; for these years many kinds of data were examined for indications of milk prices. Milk-market control officials, cooperative marketing associations, and many of the principal milk buying agencies had kept fairly complete records and comprehensive data were obtained in all important milk-marketing areas for a number of years.

VARIATIONS IN METHODS OF PAYING THESE PRICES

The flat-price plan of paying one price per unit of milk for all purposes was used by practically all milk-buying agencie until after the World War, and this method with slight modifications is still used by milk-products plants generally. Variations of this plan developed and spread rapidly in the early twenties whereby prices paid to farmers varied with the butterfat content of the milk. For several years now practically all milk has been purchased on a butterfat basis.

During and immediately following the World War, cooperative milk-marketing associations became more numerous and influential. They were instrumental in the development of new plans for marketing milk in most of the large fluid-milk consuming centers. A principal object of these plans was the solution of the "surplus" problem by adjusting production to market requirements of fluid milk for human consumption through various methods of payment for milk. Under the "classification" or "use" plan, pools were organized, each covering an entire milk shed, or smaller marketing area within a larger milk shed. Under the "basic-surplus" plan the basic quantities of milk for individual farmers were determined by contract, or by production during a specified base period, or by modifications of these methods in an attempt to adjust the total of the individual "bases" to milk requirements for fluid consumption.

How THESE SERIES WERE CONSTRUCTED

The series of price estimates here presented represent the average prices received by farmers for all milk sold at wholesale for all purposes. The prices given are on the basis of prices received at the first point of delivery for milk of average butterfat content, weighted on the basis of the proportion of wholesale milk sales at each price. Weights used in the construction of these price series were based on the proportion of milk sales by crop-reporting districts in each State as indicated by United States agricultural census data for census years; wholesale mifk sales, by States, as estimated by the Crop Reporting Board from 1929 to 1935; and milk sales to milk-products plants, by marketing areas, as indicated by reports of the Division of Dairy and Poultry Products. A regrouping of counties in certain districts was necessary to provide homogeneous pricing areas, and adjustments were necessary in weights for certain milk-marketing areas to eliminate the influence of retail milk sales and to allocate properly the weights for milk for manufacture.

MILK-PRICE MOVEMENTS, 1909-1936

Milk prices were fairly steady until 1916. They lagged behind the general price level during and immediately following the World War. Beginning to rise late in 1916, they reached the peak in December 1918, remained at a fairly high level until October 1920, then dropped rapidly in 1920-21, and remained low in 1922. Milk prices rose slightly in 1923 and, after reflecting the slight downturn in

industrial activity in 1924, rose steadily until 1929. Again lagging behind the general price level, milk prices dropped drastically from 1930 to 1938, and remained at the pre-war level from 1932 to 1934. Since 1934 the trend has been noticeably upward.

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Year	Jan.	Feb.	Mar.	Apr.	May	June	July	/ Aug.	Sept.	Oct.	.Nov.	Dec	Weighted
	Dol.	. Dol.	Dol.	Dol.	Dol.	Dol.	. Dol.	. Dol.	Dol.	Dol.	Dol.	Dol.	Del.
606			20			1		1.65	1.70	1.85	1.90	1.95	
016	1.85	1.80	1.75	1.75	1.65	1.60	1.75	1.75	1.80	1.85	1.90	1.85	1.75
. 116	1.80	1.70	1.60	1.55	1.50	1.55	1.65	1.70	1.75	1.85	1.90	1.95	1.70
1912	1.90	1.85	1.80	1.75	1.65	1.65	1.75	1.80	1.85	1.95	. 2.05	2.05	1.85
913	1.95	1.90	1.85	1,80	1.70	1.65	1.80	1.90	1.95	2.00	2.10	2.10	1.90
914	2.05	1.96	1.85	L.70	1.65	1.60	1.75	1.85	1.95	2.10	2.15	2.15	1.90
1016	910	00 6	1 85	1 70	10	1 50	1.70	1.80	1 90	00%	9.90	9.98	1.85
916	21.6	2.10	2.05	1 90	1.85	9.75	061	2.00	2.05	2.45	2.55	2.75	2.10
216	2.60	2.55	2.50	2.45	2.40	2.35	2.45	2.95	3.00	3.10	3.15	3.20	2.70
818	3.60	3.60	3.50	3.25	3.05	2.95	3.25	3.40	3.50	3,85	4.15	4.15	3.50
616	4.00	3.85	3.55	3.35	3.10	3.00	3.35	3.46	3.55	3.65	3.85	3.85	3.50
920	3.75	3.70	3.65	3.50	3.30	3.20	3.50	3.75	3.75	3.75	3.90	3.55	3.60
921	3.30	2.80	2.40	2.65	2.45	2.50	2.80	3.10	3.15	3.15	3.05	2.85	2.85
. 655	2.45	2.35	2.30	2.25	2.20	2.15	2.40	2.50	2.60	2.85	2.90	2.95	2.45
923	2.95	2.90	2.85	2.55	2.40	2.35	2.55	2.85	2.90	3.00	3.10	3.05	2.76
924	2.95	2.60	2.40	2.15	2.15	2.15	2.40	2.56	2.65	2.70	. 5.80	2.75	2.50
1925	2.70	2.60	2.45	2.40	2.25	2.25	2.45	2.65	2.75	2.82	2.90	2.80	2.55
. 956	2.75	2.70	2.60	2.55	2.50	2.25	2.50	2.60	2.65	2.70	2.90	2.90	2.60
927	2.80	2.80	2.75	2.70	2.50	2.40	2.55	2.80	2.95	3.00	3.05	3.10	2.75
928	3.05	3.00	2.90	2.60	2.50	2.46	2.70	2.90	2.90	3.00	3.15	3.15	2.85
1929	3.10	\$:05	2.95	2.80	2.70	2.50	2.75	2.86	2.96	2.96	2.90	2.80	2.85
1930	2.60	2.60	2.50	2.50	2.40	2.30	2.45	2.70	2.75	2.65	2.55	2.30	2.50
1931	2.15	1.95	1.95	1.90	1.85	1.80	1.85	2.10	2.30	2.30	2.05	1.80	2.00
1932	1.60	1.60	1.55	1.55	1.60	1.45	1.70	1.90	1.85	1.85	1.85	1.85	1.70
1933	1.70	1.45	1.45	1.45	1.50	1.70	1.75	1.95	1.90	1.85	1.95	1.95	1.70
1934	1.95	1.95	1.85	1.85	1.75	1.70	1.85	1.90	1.95	2.05	2.20	2.52	1.90
1935	2.30	2.40	2.35	2.25	2.00	1.75	1.75	1.70	1.70	1.85	2.10	2.15	2.00
1936	2.10	5 50	01 6	000									

Bureau of Agricultural Economics, Crop Reporting Board.

Milk, whole: Wholesale price per 100 pounds received by farmers, New Hampshire, by months.

	Weighted	Dol.	0	1.90	1.90	1.95	2.05	2.00	2.00	2.10	2.75	3.65	3.75	3.80	2,95	2.55	2.90	2.70	2.75	2.85	2.85	2.90	3.05	2.80	2.15	1.20	1.70	2.00	2.10	2.10
	Dec.	Dol.	2.15	2.05	2.15	2.25	2.35	2.35	2.35	2.65	3.40	4.20	4.25	3.90	3.15	3.00	3.25	3.00	3.00	3.20	3.30	3.25	3.05	2.50	1.85	2.00	2.00	2.30	2.25	2.00
	.Nov.	Dol.	2.15	2.05	2.15	2.25	2.35	2.35	2.35	2.60	3.35	4.20	4.25	4.10	3.20	3.00	3.40	3.00	3.05	3.10	3,25	3.25	3.15	2.80	2.15	5.00	2.00	2.10	2.20	2.15
	Och	Dol.	2.05	2.00	2.10	2.15	2.25	2.25	2.20	2.50	3.35	4.00	4.00	4.05	3.20	2.90	3.10	3.05	3.05	2.95	3.10	3.05	3.15	2.95	2.40	1.95	1.90	2.05	1.95	2.10
	Sept.	. Dol.	1.90	1.95	2.05	2.00	2.15	. 2.00	2.05	2.10	3.15	5.80	3.85	4.00	3.15	2.65	3.05	3.05	2.95	2.95	3.05	2.95	7.10	3.05	2.45	1.95	1.90	5.00	1.80	2.20
	Aug.	. Dol.	1.80	1.85	2.00	1.95	2.10	2.00	2.00	2.05	3.10	3.70	3.80	3.95	3.05	2.55	3.00	2.75	2.90	2.85	2.80	2.95	3.05	3.00	2.25	1.95	1.95	1.95	1.80	2.20
1936	duly .	Dol.		1.80	1.85	1.85	1,95	1.90	1.90	1.95	2.50	3.40	3.55	3.65	2.80	2.50	2.75	2.55	2.70/	2.80	200	2.75	2.90	2.70	2.10	1.75	1.70	1.90	1.85	2.25
1909-193	June	Dol.	٠	1.55	1.55	1.55	1.70	1.60	1.60	1.65	2.20	3.00	3.15	3.30	2.40	2.15	2.45	2,25	2.35	2.45	2.50	2.55	2.65	2.55	1.95	1.55	1.55.	1.80	1.85	1.85
	May	Dol.		1.60	1.60	1.60	1.75	1.70	1.70	1.75	2.30	3:10	23.22	3.40	2.45	2.15	2.50	2.25	2.35	2.70	2.60	2.60	2.95	2.65	2.00	1.65	1.45	1.85	2.10	1.90
	Apr.	Dol.		1.85	1.70	1.75	1.95,	1.90	1.85	1.90	2.40	3.50	3.50	3.65	2.70	2.35	2.60	2.25	2.55	2.75	2.75	2.75	3.05	2.75	2.05	1.65	1.45	1.90	2.35	2:10
	Mar	. Dol.		1.90	1.80	1.95	2:05	2,00	1.96	2.05	2.45	3.70	3.60	3.85	2.80	2.45	2.90	2.40	2,55	2.85	2.80	2.95	3.15	2.75	2.10	1.65	1.45	1.90	2.45	2.20
	Feb.	· Dol.	•	. 2.00	1.90	2.00	2.15	2.10	2:10	2.15	2.50	3.75	3.80	3.90	3.00	2.45	2.90	2.75	2.90	2.90	3.00	3.00	3.20	2.85	2.10	1.70	1.50	2.05	2.50	2.30
	Jan.	Dol.		2.10	1.95	2.05	2.20	2.20	2.20	2 25	2.55	3.75	4.00	4.05	3.75	2.50	2.95	3.20	2.96	2.95	3.00	3.15	3.25	2.90	2.30	1.70	1.70	2000	2.40	2.20
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Milk, whole: Wholesale price per 100 pounds received by farmers, Vermont, by months, 1909-1936

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Peb. Mat. Apr. May June July Aug. Sept. Oct.	Dec.	.Dol.	1.75	1.80	1.80	1.85	1.85	2.00	1.90	2.15	3.25	3.05	4.10	3.55	2.70	3.00	2.95	2.75	2.85	3.00	3.25	3.10	2.90	2.30	1.60	1.65	1.65	2.10	2.00	1 75
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Feb. Mar. Apr. May June July Jod. Dol. Dol. Dol. Dol. Dol. Dol. Dol. Dol	Sept.	Dol.	1.40	1.55	I.50	1.50	1.55	1.50	1.50	1.65	2.60	3.10	3.45	3.60	2.70	2.50	2.75	5.60	2.70	2.70	2.90	2.85	3.05	2.80	2.10	1.60	1.75	1.75	1.55	1 05
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	Mar.	Dol.		1.55	1.55	1.60	1.65	1.60	1.60	1.65	2.05	3.15	3.30	3.55	2.45	2.05	2.65	2.20	2.35	2.50	2.60	2.75	2.90	2.50	1.85	1.45	1.15	1.65	2.20	1 05
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	Jan.	Dol.	3	1.75	1.80	1.70	1.80	1.80	1.85	1.80	2.15	3.35	3.75	3.85	3,15	2.30	2.50	2.80	2.65	2.70	2.70	00.0	3.10	2.65	2.00	1.50	1.40	1.80	2.15	1 QK .
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Sureau of Agricultural Economics, Crop Reporting Board.

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Exhibit No. 19 is omitted by stipulation of the parties. It will be certified to the Appellate Court as an original exhibit.

EXHIBIT 20.

PLANT NOTICE No. 2

To Hood Producers Delivering to This Station:

H. P. Hood & Sons, Inc. will pay beginning Dec. 16, 1936 for all milk delivered by individual producers to this plant, a minimum price of \$2.20 per hundredweight for 3.7% milk at the 200 mile zone. The actual price paid will be based on \$2.895 per hundredweight f.o.b. Boston for Class I milk, less the usual freight, container and plant allowances, and modified only by Class II price for the surplus of deliveries to the Hood Company over the actual sales of milk by the Hood Company for the period.

For deliveries to Hood plants during the last half of November, this price was \$2.23 per hundredweight for

3.7% milk at the 200 mile zone.

'No deductions for dues will be made.

Our usual requirements as to quality and temperatures will prevail.

It is the position of the Hood Company that the issues at stake in the present controversy must be decided by each producer for himself. It has instructed all its employees to offer no inducement to producers to break any contract they may have with any cooperative. The Hood Company cannot undertake to examine into the relationship of each producer with a cooperative, and the continued delivery of milk at this station will be taken to be the voluntary action of each producer without inducement on our part.

H. P. Hood & Sons, Inc.

December 14, 1936.

PLANT NOTICE No. 3

To Hood Producers Delivering to This Station:

H. P. Hood & Sons, Inc. will pay on and after Feb. 1, 1937 for all milk delivered by individual producers to this plant, a price for 3.7% milk based on \$2.895 per hundred-weight f.o.b. Boston for Class I milk, less the usual freight, container and plant allowances, and modified only by Class II price for the surplus of delivereies to the Hood Company over the actual sales of milk by the Hood Company for the period.

No deductions for dues will be made.

Our usual requirements as to quality and temperatures

will prevail.

It is the position of the Hood Company that the issues at stake in the present controversy must be decided by each producer for himself. It has instructed all its employees to offer no inducement to producers to break any contract they may have with any cooperative. The Hood company cannot undertake to examine into the relationship of each producer with a cooperative, and the continued delivery of milk at this station will be taken to be the voluntary action of each producer without inducement on our part.

H. P. HOOD & Sons, Inc.

January 29, 1937

PLANT NOTICE No. 4

To Hood Producers Delivering to This Station:

H. P. Hood & Sons, Inc. will pay for the month of March, 1937 for all milk delivered by individual producers to this plant \$2.10 per hundredweight for 3.7% milk in the 200 mile zone. Prices in other zones will be adjusted in the usual manner. It is anticipated that additional milk will be offered for sale to the Company March 1 and this is a guarantee price regardless of surplus.

No deductions for dues will be made.

Our usual requirements as to quality and temperatures will prevail.

It be the position of the Hood Company that the issues at stake in the present controversy must be decided by each producer for himself. It has instructed all its employees to offer no inducement to producers to break any contract they may have with any cooperative. The Hood Company cannot undertake to examine into the relationship of each producer with a cooperative, and the continued delivery of milk at this station will be taken to be the voluntary action of each producer without inducement on our part.

H. P. Hood & Sons, Inc.

February 23, 1937

PLANT NOTICE No. 5

To Hood Producers Delivering to This Station:

H. P. Hood & Sons, Inc. will pay for the month of April, 1937 for all milk delivered by individual producers to its plants, \$2.00 per hundredweight for 3.7% milk in the 200 mile zone. Prices in other zones will be adjusted in the usual manner. It is anticipated that additional milk will be offered for sale to the Company April 1 and this is a guaranteed price regardless of surplus.

No deductions for dues will be made.

Our usual requirements as to quality and temperatures will prevail.

It is the position of the Hood Company that the issues at stake in the present controversy must be decided by our producers themselves. It has instructed all its employees to offer no inducement to producers to break any contract they may have with any cooperative. The Hood Company cannot undertake to examine into the relationship of each producer with a cooperative, and the continued delivery of milk at this station will be taken to be the voluntary action of each producer without inducement on our part.

H. P. Hood & Sons, Inc.

March 31, 1937

The price at this plant will be \$......

PLANT NOTICE

To Hood Producers Delivering to This Station:

H. P. Hood & Sons, Inc., will pay for the month of May, 1937 for all milk delivered by individual producers to its plants \$1.85 per hundredweight net for 3.7% milk in the 200 mile zone with a butterfat differential based on the value of fat in cream less 8¢ per lb. Prices in other zones will be adjusted in the usual manner. It is anticipated that production will increase through May, and this is a guaranteed price regardless of surplus based on present resale prices.

All malk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other cases which shall-interfere with the transportation or sale of milk, the Company shall not

be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant, and the continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein.

H. P. HOOD & SONS, INC.

April 28, 1937

PLANT NOTICE

To Hood Producers Delivering to This Station:

H. P. Hood & Sons, Inc. will pay for the month of June, 1937 for all milk delivered by individual producers to its plants, \$1.81 per hundredweight net for 3.7% milk in the 200 mile zone with a butterfat differential based on the value of fat in cream less 8¢ per lb. Prices in other zones will be adjusted in the usual manner. It is anticipated that the average production and average surplus for the month of June will, as in the past, be higher than in May, and this is a guaranteed price regardless of surplus based on present resale prices.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other cases which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant, and the continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein.

H. P. HOOD & Sens, Inc.

June 1, 1937

PLANT NOTICE

To Hood Producers Delivering to This Station:

H. P. Hood & Sons, Inc. will pay for the first half of July, 1937 for all milk delivered by individual producers to tis plants, not less than \$2.20 per hundredweight net for 3.7% milk in the 200 mile zone with a butterfat differential based on the value of fat in cream less 8¢ per lb. Prices in other zones will be adjusted in the usual manner.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other cases which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant, and the continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein.

H. P. HOOD & Sons, INC.

July 1, 1937

Exhibits

PLANT: NOTICE

To Hood Producers Delivering to This Station:

H. P. Hood & Sons, Inc. will pay for the last half of July, 1937 for all milk delivered by individual producers to its plants, not less than \$2.31 per hundredweight net for 3.7% milk in the 200 mile zone with a butterfat differential based on the value of fat in cream less & per lb. Prices in other zones will be adjusted in the usual manner.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other cases which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant, and the continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein.

H. P. HOOD & SONS, INC.

July 16, 1937

PLANT NOTICE

To Hood Producers Delivering to This Station:

The Secretary of Agriculture has issued an order which purports to govern prices to be paid to producers eligible to ship milk to the Boston Market. The order is effective August 1. Following our custom of some months past, we are quoting a price for August milk subject to such adjustments as the order may require.

H. P. Hood & Sons, Inc. will pay for the first half of August, 1937 for all milk delivered by individual producers to its plants, not less than \$2.40 per cwt. net for 3.7% milk in the 200 mile zone with a butterfat differential based on the value of fat in cream less 8 cents per pound, but in no event less than the prices fixed in the Order equalized

among producers of H. P. Hood & Sons, Inc. From said guaranteed minimum price of \$2.40 per cwt. net, H. P. Hood & Sons, Inc. is authorized to deduct each producer's proportionate part of any sums which H. P. Hood & Sons, Inc. is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with ditigation concerning said Order, in respect of milk delivered in said period. Prices in other zones will be adjusted in the usual manner. No producer shall be entitled to recover from H. P. Hood & Sons, Inc. the amount of any such deductions based on payments actially made by H. P. Hood & Sons, Inc. to the Federal Milk Administrator, or pursuant to such a court order, on ground that the exaction of such payments from H. P. Hood & Sons, Inc. was illegal or unconstitutional. If any payments so made, on the basis of which H. P. Hood & Sons, Inc. has made deductions, are unconditionally repaid to H. P. Hood & Sons, Inc., it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk; the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. Hood & Sons, Inc. regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

H. P. Hood & Sons, Inc.

PLANT NOTICE

To Hood Producers Delivering to This Station:

The Secretary of Agriculture has issued an order which purports to govern prices to be paid to producers eligible to ship milk to the Boston Market. The order purports to become effective August 1, 1937. Following our custom of some months past, we are quoting a price for milk for the last half of August as set forth below.

H. P. Hood & Sons, Inc. will pay for the last half of August, 1937 for all milk delivered by individual producers to its plants, not less than \$2.45 per ewt. net for 3.7% milk in the 200 mile zone with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than the prices fixed in the Order equalized among producers of H. P. Hood & Sons, Inc. From said guaranteed minimum price H. P. Hood & Sons, Inc. is authorized to deduct each producer's proportionate part of any sums which H. P. Hood & Sons, Inc. is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. Prices in other zones will be adjusted in the usual manner. No producer will be entitled to recover from H. P. Hood & Sons, Inc. the amount of any such deductions based on payments actually made by H. P. Hood & Sons, Inc. to the Federal Milk Administrator, or pursuant to such a court order, on the ground that the exaction of such payments from H. P. Hood & Sons, Inc. was illegal or unconstitutional. If any payments so made, on the basis of which H. P. Hood & Sons; Inc. has made deductions, are unconditionally repaid to H. P. Hood & Sons, Inc., it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of applicable laws. In case of strikes

or other causes which shall interfere with the transportation of sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. Hood & Sons, Inc. regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

H. P. Hood & Sons, Inc.

August 16, 1937

PLANT NOTICE

To Hood Producers Delivering to This Station:

H. P. Hood & Sons, Inc. will pay for the first half of September, 1937 for all milk delivered by individual producers to its plants, not less than \$2.40 per cwt. net for 3.7% milk in the 200 mile zone with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than the prices fixed in the Order equalized among producers of H. P. Hood & Sons, Inc. From said guaranteed minimum price H. P. Hood & Sons, Inc. is authorized to deduct each producer's proportionate part of any sums which H. P. Hood & Sons, Inc. is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. Prices in other zones will be adjusted. in the usual manner. No producer will be entitled to recover from H. P. Hood & Sons, Inc. the amount of any such deductions based on payments actually made by H. P. Hood & Sons, Inc. to the Federal Milk Administrator, or pursu:

ant to such a court order, on the ground that the exaction of such payments from H. P. Hood & Sons, Inc. was illegal or unconstitutional. If any payments so made, on the basis of which H. P. Hood & Sons, Inc. has made deductions, are unconditionally repaid to H. P. Hood & Sons, Inc., it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. Hood & Sons, Inc. regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

H. P. HOOD & Sons, Inc.

September 1, 1937

PLANT NOTICE

To Hood Producers Delivering to This Station:

H. P. Hood & Sons, Inc. will pay for the last half of September, 1937, for all milk delivered by individual producers to its plants, not less than \$2.40 per cwt. net for 3.7% milk in the 200 mile zone with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than the prices fixed in the Order equalized among producers of H. P. Hood & Sons, Inc. From said guaranteed minimum price H. P. Hood & Sons, Inc. is au-

thorized to deduct each producer's proportionate part of any sums which H. P. Hood & Sons, Inc. is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. Prices in other zones will be adjusted in the usual manner. No producer will be entitled to recover from H. P. Hood & Sons, Inc., the amount of any such deductions based on payments actually made by H. P. Hood & Sons, Inc. to the Federal Milk Administrator, or pursuant to such a court order, on the ground that the action of such payments from H. P. Hood & Sons, Inc. was illegal or unconstitutional. If any payments so made, on the basis of which H. P. Hood & Sons, Inc. has made deductions, are unconditionally repaid to H. P. Hood & Sons, Inc. it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. Hood & Sons, Inc. regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business—necessity of that provision.

H. P. Hood & Sons, Inc.

September 16, 1937.

PLANT NOTICE

To Hood Producers Delivering to This Station:

H. P. Hood & Sons, Inc. will pay for the first half of October, 1937 for all milk delivered by individual producers to its plants, not less than \$2.40 per cwt. net for 3.7% milk in the 200 mile zone with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than the prices fixed in the Order equalized among producers of H. P. Hood & Sons, Inc. From said guaranteed minimum price H. P. Hood & Sons, Inc. is, authorized to deduct each producer's proportionate part of any sums which H. P. Hood & Sons, Inc. is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. Prices in other zones will be adjusted in the usual manner. No producer will be entitled to recover from H. P. Hood & Sons, Inc. the amount of any such deductions based on payments actually made by H. P. Hood & Sons, Inc. to the Federal Milk Administrator, or pursuant to such a court order, on the ground that the exaction of such payments from H. P. Hood & Sons, Inc. was illegal or unconstitutional. If any payments so made, on the basis of which H. P. Hood & Sons, Inc. has made deductions, are unconditionally repaid to H. P. Hood & Sons, Inc. it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. Hood & Sons, Inc. regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

H. P. HOOD & Sons, INC.

October 1, 1937

PLANT NOTICE

To Hood Producers:

The Federal Government has begun purchasing milk from dealers and cooperatives who are complying with the AAA Milk Order, and in conjunction with the local welfare agencies is giving it away to the needy and unemployed in Greater Boston. It is evident that this milk is, inclarge part, replacing milk now being distributed through usual channels. The volume of regular milk sales in the market is therefore decreasing.

Because of these changed conditions, H. P. Hood & Sons, Inc. will pay for all milk delivered by individual producers during the period October 16-31, 1937 to its plants such price as may be announced by the Federal Milk Administrator. In the event that H. P. Hood & Sons., Inc. fails to pay subsequently charges established by the AAA Milk Order with respect to milk delivered during this pay period, it will make such additional payments to producers as are necessary to raise the price of \$2.28 per cwt. for 3.7% milk delivered at a plant in the 200 mile zone. Prices in other zones will be adjusted in the usual way. No producer will be entitled to recover from H. P. Hood & Sons,

c. such additional payments on the ground that the exaction from the Company of charges established by the AAA Milk Order was ille all or unconstitutional.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the

transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. Hood & Sons, Inc.

October 16, 1937

PLANT NOTICE

To Hood Producers:

H. P. Hood & Sons, Inc. will pay for all milk delivered to its plants by individual producers during the period November 1-15, 1937 such price as may be announced by the Federal Milk Administrator. In the event that H. P. Hood & Sons, Inc. is not obliged to pay subsequently equalization and other charges established by the AAA Milk Order with respect to milk delivered during this pay period, it will make such additional payments to producers as will raise the price to \$2.35 per cwt. for 3.7% milk delivered at a plant in the 200 mile zone. Butterfat and zone differences will be adjusted in the usual way. No producer will be entitled to recover from H. P. Hood & Sons, Inc. such additional amounts on the ground that the exaction from the Company of charges established by the AAA Milk Order was illegal or unconstitutional.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. HOOD & Sons, INC.

November 1, 1937

PLANT NOTICE

To Hood Producers:

H. P. Hood & Sons, Inc. will pay for all milk delivered to its plants by individual producers during the period November 16-30, 1937 such price as may be announced by the Federal Milk Administrator. In the event that H. P. Hood & Sons, Inc. is not obliged to pay subsequent equalization and other charges established by the AAA Milk Order with respect to milk delivered during this pay period, it will make such additional payments to producers as will raise the price to \$2.40 per cwt. for 3.7% milk delivered at a plant in the 200 mile zone. Butterfat and zone differences will be adjusted in the usual way. No producer will be entitled to recover from H. P. Hood & Sons, Inc. such additional amounts on the ground that the exaction from the Company of charges established by the AAA Milk Order was illegal or unconstitutional.

All/milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. HOOD & SONS, INC.

November 16, 1937.

PLANT NOTICE

To Hood Producers:

H. P. Hood & Sons, Inc. will pay for all milk delivered to its plants by individual producers during the period December 1-15, 1937 such price as may be announced by the Federal Milk Administrator. In the event that H. P. Hood & Sons, Inc. is not obliged to pay subsequently equalization and other charges established by the AAA Milk Order with respect to milk delivered during this pay period, it will make such additional payments to producers as will raise the price to not less than \$2.40 per cwt. for 3.7% milk delivered at a plant in the 200 mile zone. Butterfat and zone differences will be adjusted in the usual way. No producers will be entitled to recover from H. P. Hood & Sons, Inc. such additional amounts on the ground that the exaction from the Company of charges established by the AAA Milk Order was illegal or unconstitutional.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. HOOD & SONS, INC.

December 1, 1937

PLANT NOTICE

To Hood Producers:

H. P. Hood & Sons, Inc. will pay for all milk delivered to its plants by individual producers during the period December 16-31, 1937 such price as may be announced by

the Federal Milk Administrator. In the event that H. P. Hood & Sons, Inc. is not obliged to pay subsequently equalization and other charges established by the AAA Milk Order with respect to milk delivered during this pay period, it will make such additional payments to producers as will raise the price to not less than \$2.35 per cwt. for 3.7% milk delivered at a plant in the 200 mile zone. Butterfat and zone differences will be adjusted in the usual way. No producers will be entitled to recover from H. P. Hood & Sons, Inc. such additional amounts on the ground that the exaction from the Company of charges established by the AAA Milk Order was illegal or unconstitutional.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

H. P. Hood & Sons, Inc.

December 16, 1937

Exhibits

EXHIBIT 21

H. P. Hood & Sons, Inc.

3.7% MILK

	٠.,	20th Zone Pool Price Non- Members	20th Zone Prices Posted in Hood Plant Notices*	Excess of Posted Prices over Pool Prices	Total Money Value Excess of Posted Prices over Pool Prices
Aug.	1-15	\$2.078	\$2.426	\$.348	\$32,599.55
66	16-31	2.106	2.460	.354	34,487.13
Sept.	1-15	1.887	2.413	.526	49,628.29
	16-30	1.870	2:400	.530	50,003.06
Oct.	1-15	1.857.	2.409	.552	50.393.92
44	16-31	2.018	2.260	.242	21,041.66
Nov.	1-15	2.217	2.330	.113	8,085,98
6.6	16-30	2.271	2.380	.109	. 7,525.00
Dec.	1-15	2.252	2.380	.128	8,937.76
4.4	16-31	2.115	2.330	.215	16,503.70
	11 12				\$279,206.05

^{*} After deducting 2¢ paid Administrator.

EXHIBIT 22.

PLANT NOTICE No. 2

To Noble Producers Delivering to This Station:

Noble's Milk Company will pay beginning December 16, 1936 for all milk delivered by individual producers to this plant, a minimum price of \$2.271 per hundredweight for 3.7% milk. The actual price paid will be based on \$2.895 per hundredweight f.o.b. Boston for Class I milk, less the usual freight, container and plant allowances, and modified only by Class II price for the surplus of deliveries to the Noble Company over the actual sales of milk by the Noble Company for the period.

For deliveries to this plant during the last half of November, this price was \$2.297 per hundredweight for 3.7% milk.

No deductions for dues will be made.

Our usual requirements as to quality and temperatures will prevail.

It is the position of the Noble Company that the issues at stake in the present controversy must be decided by each producer for himself. It has instructed all its employees to offer no inducement to producers to break any contract they may have with any cooperative. The Noble company cannot undertake to examine into the relationship of each producer with a cooperative, and the continued delivery of milk at this station will be taken to be the voluntary action of each producer without inducement on our part.

NOBLE'S MILE COMPANY

December 14, 1936.

PLANT NOTICE No. 3

To Noble Producers Delivering to This Station:

Noble's Milk Company will pay on and after Feb. 1, 1937 for all milk delivered by individual producers to this plant, a price for 3.7% milk based on \$2.895 per hundredweight f.o.b. Boston for Class I milk, less the usual freight, container and plant allowances, and modified only by Class II price for the surplus of deliveries to the Noble Company over the actual sales of milk by the Noble Company for the period.

. No deductions for dues will be made.

Our usual requirements as to quality and temperatures will prevail.

It is the position of the Noble Company that the issues at stake in the present controversy must be decided by each producer for himself. It has instructed all its employees to offer no inducement to producers to break any contract they may have with any cooperative. The Noble Company cannot undertake to examine into the relationship of each producer with a cooperative, and the continued delivery of milk at this station will be taken to be the volun-

tary action of each producer without inducement on our part.

NOBLE'S MILK COMPANY

January 29, 1937

PLANT NOTICE No. 4

To Noble Producers Delivering to This Station:

Noble's Milk Company will pay for the month of March, 1937 for all milk delivered by individual producers to this plant \$2.17 per hundredweight for 3.7% milk. It is anticipated that additional milk will be offered for sale to the Company March 1 and this is a guaranteed price regardless of surplus.

No deductions for dues will be made. .

Our usual requirements as to quality and temperatures will prevail.

It is the position of the Noble Company that the issues at stake in the present controversy must be decided by each producer for himself. It has instructed all its employees to offer no inducement to producers to break any contract they may have with any cooperative. The Noble Company cannot undertake to examine into the relationship of each producer with a cooperative, and the continued delivery of milk at this station will be taken to be the voluntary action of each producer without inducement on our part.

NOBLE'S MILK COMPANY

February 23, 1937

PLANT NOTICE No. 5

To Noble Producers Delivering to This Station:

Noble's Milk Company will pay for the month of April, 1937 for all milk delivered by individual producers to this plant, \$2,070 per hundredweight for 3.7% milk. It is anticipated that additional milk will be offered for sale to the Company April 1 and this is a guaranteed price regardless of surplus.

No deductions for dues will be made.

Our usual requirements as to quality and temperatures will prevail.

It is the position of the Noble Company that the issues at stake in the present controversy must be decided by our producers themselves. It has instructed all its employees to offer no inducement to producers to break any contract they may have with any cooperative. The Noble company cannot undertake to examine into the relationship of each producer with a cooperative, and the continued delivery of milk at this station will be taken to be the voluntary action of each producer without inducement on our part.

NOBLE'S MILK COMPANY

March 31, 1937

PLANT NOTICE

To Noble Producers Delivering to This Station:

Noble's Milk Company will pay for the month of May, 1937 for all milk delivered by individual producers to this plant, \$1.92 per hundredweight for 3.7% milk. It is anticipated that production will increase through May and this is a guaranteed price regardless of surplus based on present resale prices.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Law. In tase of strikes or other cases which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant, and the continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein.

NOBLE'S MILK COMPANY

April 28, 1937.

PLANT NOTICE

To Noble Producers Delivering to This Station:

Noble's Milk Company will pay for the month of June, 1937 for all milk delivered by individual producers to this plant, \$1.881 per hundredweight for 3.7% milk. It is anticipated that the average production and average surplus for the month of June will, as in the past, be higher than in May, and this is a guaranteed price regardless of surplus based on present resale prices.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other cases which shall interfere with the transportation or sale of milk, the Company shall not be

required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant, and the continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein.

NOBLE'S MILK COMPANY

June 1, 1937

Noble's Milk Company
500 Rutherford Ave.
Boston, Mass.

To Noble Producers Delivering to This Station:

Noble's Milk Company will pay for the first half of July, 1937 for all milk delivered by individual producers to this plant, not less than \$2.27 per hundredweight for 3.7% milk, with a butterfat differential based on the value of fat in cream less 8¢ per lb.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other cases which shall interfere with the

transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available, at this plant, and the continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein.

NOBLE'S MILK COMPANY.

July 1, 1937

PLANT NOTICE

To Noble Producers Delivering to This Station:

Noble's Milk Company will pay for the last half of July, 1937 for all milk delivered by individual producers to this plant, not less than \$2.38 per hundredweight for 3.7% milk, with a butterfat differential based on the value of fat in cream less 8¢ per lb.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of Strikes or other cases which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant, and the continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein.

NOBLE'S MILK COMPANY

July 16, 1937

PLANT NOTICE

To Noble Producers:

The Secretary of Agriculture has issued an order which purports to govern prices to be paid to producers eligible to ship milk to the Boston Market. The order is effective August 1, 1937. Following our custom of some months

past, we are quoting a price for August milk subject to such adjustments as the order may require.

Noble's Milk Company will pay for the first half of August, 1937 for all milk delivered by individual producers to this plant, not less than \$2.47 per cwt. net for 3.7% milk with a butterfat differential based on the value of fat in cream less 8 cents per pound, but in no event less than the prices fixed in the Order equalized among producers of Noble's Milk Company. From said guaranteed minimum price of \$2.47 per cwt. net, Noble's Milk Company is authorized to deduct each producer's proportional part of any sums which Noble's Milk Company is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. No producer shall be entitled to recover from Noble's Milk Company the amount of any such deductions based on payments actually made by Noble's Milk Company to the Federal Milk Administrator, or pursuant to such a court order, on ground that the exaction of such payments from Noble's Milk Company was illegal or unconstitutional. If any payments so made, on the basis of which Noble's Milk Company has made deductions, are unconditionally repaid to Noble's Milk Company, it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of State and Federal Laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

Noble's Milk Company regrets the necessity of the above

provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

NOBLE'S MILK COMPANY

August 1, 1937

PLANT NOTICE

To Noble Producers:

The Secretary of Agriculture has issued an order which purports to govern prices to be paid to producers eligible to ship milk to the Boston Market. The order purports to become effective August 1, 1937. Following our custom of some months past, we are quoting a price for milk for the last half of August as set forth below.

Noble's Milk Company will pay for the last half of August, 1937 for all milk delivered by individual producers to this plant, not less than \$2.52 per cwt. net for 3.7% milk with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than. the prices fixed in the Order equalized among producers of Noble's Milk Company. From said guaranteed minimum price Noble's Milk Company is authorized to deduct each producer's proportional part of any sums which Noble's Milk Company is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. No producer will be entitled to recover from Noble's Milk Company the amount of any such deductions based on payments actually made by Noble's Milk Company to the Federal Milk Administrator, or pursuant to such a court order, on the ground that the exaction of such payments from Noble's Milk Company was illegal or unconstitutional. If any payments so made, on the basis of which Noble's Milk Company has made deductions, are unconditionally repaid to Noble's Milk Company, it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the require tents of the various Boards of Health where the Company sells milk, and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

Noble's Milk Company regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

NOBLE'S MILK COMPANY

August 16, 1937

PLANT NOTICE

To Noble Producers:

Noble's Milk Company will pay for the first half of September, 1937 for all milk delivered by individual producers to this plant, not less than \$2.47 per cwt. net for 3.7% milk with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than the prices fixed in the Order equalized among producers of Noble's Milk Company. From said guaranteed minimum price Noble's Milk Company is authorized to deduct each producer's proportionate part of any sums which Noble's Milk Company is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period.

No producer will be entitled to recover from Noble's Milk Company the amount of any such deductions based on payments actually made by Noble's Milk Company to the Federal Milk Administrator, or pursuant to such a court order, on the ground that the exaction of such payments from Noble's Milk Company was illegal or unconstitutional. If any payments so made, on the basis of which Noble's Milk Company has made deductions, are unconditionally repaid to Noble's Milk Company, it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Board of Health where the Company sells milk, and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipent of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

Noble's Milk Company regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

NOBLE'S MILK COMPANY

September 1, 1937.

PLANT NOTICE

To Noble Producers:

Noble's Milk Company will pay for the last half of September, 1937 for all milk delivered by individual producers to this plant, not less than \$2.47 per cwt. net for 3.7% milk with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than the prices fixed in the Order equalized among pro-

ducers of Noble's Milk Company. From said guaranteed minimum price Noble's Milk Company is authorized to deduct each producer's proportionate part of any sums which Noble's Milk Company is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. No producer will be entitled to recover from Noble's Milk Company the amount of any such deductions based on payments actually made by Noble's Milk Company to the Federal Milk Administrator, or pursuant to such a court order, on the ground that the exaction of such payments from Noble's Milk Company was illegal or unconstitutional. any payments so made, on the basis of which Noble's Milk Company has made deductions, are unconditionally repaid to Noble's Milk Company, it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Boards of Health where the Company sells milk, and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to

accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

Noble's Milk Company regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

Noble's Milk Company

September 16, 1937.

PLANT NOTICE

To Noble Producers:

Noble's Milk Company will pay for the first half of October, 1937 for all milk delivered by individual producers to this plant, not less than \$2.47 per cwt. net for 3.7% milk with a butterfat differential based on the value of fat in cream less 8 cents per pound, and in no event less than the prices fixed in the Order equalized among producers of Noble's Milk Company. From said guaranteed minimum price Noble's Milk Company is authorized to deduct each producer's proportionate part of any sums which Noble's Milk Company is legally required to pay to the Federal Milk Administrator, or pays pursuant to an order of any court issued in connection with litigation concerning said Order, in respect of milk delivered in said period. No producer will be entitled to recover from Noble's Milk Company the amount of any such deductions based on payments actually made by Noble's Milk Company to the Federal Milk Administrator, or pursuant to such a court order, on the ground that the exaction of such payments from Noble's Milk Company was illegal or unconstitutional. If any payments so made, on the basis of which Noble's Milk Company has made deductions, are unconditionally repaid to Noble's Milk Company, it will distribute such amounts ratably among the producers entitled thereto.

All milk must meet the requirements of the various Board of Health where the Company sells milk, and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions:

Noble's Milk Company regrets the necessity of the above provision for deductions from the guaranteed minimum price but is confident that producers will recognize the business necessity of that provision.

NOBLE'S MILK COMPANY

October 1, 1937.

PLANT NOTICE

To Noble Producers:

The Federal Government has begun purchasing milk from dealers and cooperatives who are complying with the AAA Milk Order, and in conjunction with the local welfare agencies is giving it away to the needy and unemployed in Greater Boston. It is evident that this milk is, in large part, replacing milk now being distributed through usual channels. The volume of regular milk sales in the market is therefore decreasing.

· Because of these changed conditions, Noble's Milk Company will pay for all milk delivered by individual producers to its plant during the period October 16-31, 1937 such price as may be announced by the Federal Milk Administrator. In the event that Noble's Milk Company fails to pay subsequently charges established by the AAA Milk Order with respect to milk delivered during this pay period, it will make such additional payments to producers as are necessary to raise the price to such amount as would result from applying the Class I and Class II prices established by the Massachusetts Milk Control Board to the Class I and Class II sales of Noble's Milk Company. No producer will be entitled to recover from Noble's Milk Company such additional payments on the ground that the exaction from the Company of charges established by the AAA Milk Order was illegal or unconstitutional.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

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NOBLE'S MILK COMPANY

October 16, 1937.

PLANT NOTICE

To Noble Producers:

Noble's Milk Company will pay for all milk delivered to its plant by individual producers during the period Nov. 1-15, 1937 such price as may be announced by the Federal Milk Administrator. In the event that Noble's Milk Company is not obliged to pay subsequently equalization and other charges established by the AAA Milk Order with respect to milk delivered during this pay period, it will make such additional payments to producers as will raise the price to such amount as would result from applying the Class I and Class II prices established by the Massachusetts Milk Control Board to the Class I and Class II sales of Noble's Milk Company. Butterfat differences will be adjusted in the usual way. No producer will be entitled to recover from Noble's Milk Company such additional amounts on the ground that the exaction from the Company of charges established by the AAA Milk Order was illegal or unconstitutional.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

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NOBLE'S MILK COMPANY

November 1, 1937

PLANT NOTICE

To Noble Producers:

Noble's Milk Company will pay for all milk delivered to its plant by individual producers during the period Nov. 16-30, 1937 such price as may be announced by the Federal Milk Administrator. In the event that Noble's Milk Company is not obliged to pay subsequently equalization and other charges established by the AAA Milk Order with respect to milk delivered during this pay period, it will make such additional payments to producers as will raise the price to such amount as would result from applying the Class I and Class II prices established by the Massachusetts Milk Control Board to the Class I and Class II sales of Noble's Milk Company. Butterfat differences will be adjusted in the usual way. No producer will be entitled to recover from Noble's Milk Company such additional amounts on the ground that the exaction from the Company of charges established by the AAA Milk Order was illegal or unconstitutional.

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November 16, 1937.

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Noble's Milk Company will pay for all milk delivered to its plant by individual producers during the period December 1-15, 1937 such price as may be announced by the Federal Milk Administrator. In the event that Noble's Milk Company is not obliged to pay subsequently equalization and other charges established by the AAA Milk Order with respect to milk delivered during this pay period, it will make such additional payments to producers as will raise the price to such amount as would result from applying the Class I and Class II prices established by the Massachusetts Milk Control Board to the Class I and Class II sales of Noble's Milk Company. Butterfat differences will be adjusted in the usual way. No producer will be entitled to recover from Noble's Milk Company such additional amounts on the ground that the exaction from the Company of charges established by the AAA Milk Order was illegal or unconstitutional.

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NOBLE'S MILK COMPANY

PLANT NOTICE

To Noble Producers:

Noble's Milk Company will pay for all milk delivered to its plant by individual producers during the period December 16-31, 1937 such price as may be announced by the Federal Milk Administrator. In the event that Noble's Milk Company is not obliged to pay subsequently equalization and other charges established by the AAA Milk Order with respect to milk delivered during this pay period, it will make such additional payments to producers as will raise the price to such amount as would result from applying the Class I and Class II prices established by the Massachusetts Milk Control Board to the Class I and Class II sales of Noble's Milk Company. Butterfat differences will be adjusted in the usual way. No producer will be entitled to recover from Noble's Milk Company such additional amounts on the ground that the exaction from the Company of charges es tablished by the AAA Milk Order was illegal or unconstitutional.

All milk must meet the requirements of the various Boards of Health where the Company sells milk and comply with all provisions of applicable laws. In case of strikes or other causes which shall interfere with the transportation or sale of milk, the Company shall not be required to accept milk beyond its needs.

Copies of this agreement while in effect will be available at this plant. The continued shipment of milk after the public posting of this notice will constitute an acceptance of all the terms and conditions stated herein and deliveries of milk will be accepted only on those terms and conditions.

NOBLE'S MILK COMPANY

December 16, 1937.

Exhibits

EXHIBIT 23.

NOBLE'S MILK COMPANY

3.7 MILK

	. 0.	Pool Price Non- Member	Price Posted in Noble's Plant Notices*	Excess of P Prices over Prices		Total Money Value Excess of Posted Prices over Pool Prices
Aug.	1-15	\$2.149	\$2.492	\$.343		\$2,009.03
44	16-31	2.177	2.534	. 357		2,158.53
Sept.	1-15	1.958	2.468	.510	*	2,890.90
4.6	16-30	1.941	2.456	.515		2,943:98
Oct.	1-15	1.928	2.470	.542		3,217.63
66	16-31	2.089	2.338	.249		1,511,22
Nov.	1-15	2.288	2.410	.122		643.16
. 44	16-30	2.342	2.460	.118		587.10
Dec.	1-15	2.323	. 2.459	.136		. 664.37
	16-31	2.186	2.409	223		1,200.77
			1			\$17,826.69

* After deducting 2¢ paid Administrator.

EXHIBIT 24.

Edward F. Branon, Fairfield, Vermont (Zone 27)

ACCOUNT WITH

H. P. HOOD & SONS, INC.

Delic Per 19	iod .	Pounds Delivered	Test	Pool Price (Non-Member)	Prices Posted in Hood Plant Notices	Excess Posted Price over Pool Price	Money Value ExcessPosted Price Over Pool Price
Aug.	1-15	12.834	3.7	\$2.037	\$2.385	\$.348	\$44.66
66	16-31	12,100	3.6	2.025	2.379	354	42.83
Sept.	1-15	9,857	3.7	1.846	2.372	,526	51.85
46	16-30	9,059	3.7	1.829	2.359	.530	48.01
Oct.	1-15	9,102	3.5	1.736	2.288	.552	50.24
44	16-31	8.465	3.6	1.936	2.178	.242	20.49
Nov.	1-15	7,062	3.5	2.090	2.203	.113	7.98
*84	16,30	6.880	3.4	2.092	2.201	.109	7.50
Dec.	1-15	7,487	3.4	2.067	2.195	.128	9.58
46	16-31	8,027	3.3	1.894	2.109	.215	17,26
	*	٠.,		1.1		-	\$300.40

Exhibit No. 25 is omitted by stipulation of the parties. It will be certified to the Appellate Court as an original exhibit.

EXHIBIT 26.

Boston, Massachusetts
January 4, 1937

The Whiting Milk Company will pay the following prices per hundred pounds for all milk received during the month of January, testing 3.7% butterfat.

These prices are payable for milk delivered by non-members of the N.E.M.P.A., and are subject to the usual butter-fat differentials and can charges.

N. Walpole, N.H.	\$2.26
Randolph, Vt.	2,22
Waterbury, Vt.	2.19
Skowhegan, Me.	2.19
Newport, Me.	2.19
Harmony, Me.	2.18
Colebrook, N.H.	2.18

WHITING MILK COMPANY

Boston, Massachusetts January 28, 1937

To Non-Member Producers Shipping to the Whiting Milk Company

The Whiting Milk Company will pay, subject to changes hereinafter referred to, the following prices for all milk containing 3.7% butterfat delivered to our country stations during the month of February. This price is subject to the usual butterfat differential and can charges.

Zone	12	N. Walpole, N.H.	\$2.22 cwt
66	18	Randolph, Vt.	2.18 "
1.66	22	Waterbury, Vt.	2.15 "
1 66	"	Skowhegan, Me.	
	24	Harmony, Me.	2.12 "
- 66	25	Colebrook, N.H.	:66 . 66

This price is offered on the basis of the present resale conditions in the Greater Boston Market.

Every effort is being made by Greater Boston dealers to

maintain the present resale and producer prices.

The N. E. Dairies, Inc. have advertised in the Boston papers that they are prepared to sell milk for 5 1/4¢ a quart, beginning January 10. This is 1¢ lower than the present price.

If competitive conditions in this market reach a point where a drop is inevitable, your elected representatives will

be called into Boston to discuss the situation.

The prices above quoted are, therefore, subject to change during the month after consultation with your representatives.

WHITING MILK COMPANY

Boston, Massachusetts February 25, 1937

To Our Producers:

Based on present market conditions, the Whiting Milk Company proposes to pay for the month of Mar i, the following prices for all 3.7% milk delivered at coun y stations listed below. These prices are subject to the use a butterfat differential and can charges.

Zone	12	N. Walpole, N.H.	\$2.13	cwt.
.64	18	Randolph, Vt.	2.09	4.6
44	22	Waterbury, Vt.	2.06	66
-66	22	Skowhegan, Me.	2.06	44
- 6 6	22	Newport, Me.	2.06	44
	24	Harmony, Me.	2.03	. 46 .
44	25	Colebrook, N.H.	2.03	"

If competitive conditions in this market reach a point where a drop is inevitable, your elected representatives will be called into Boston to discuss the situation.

Boston, Massachusetts April 21, 1937

To Our Producers:

Based on present market conditions, the Whiting Milk Company proposes to pay for the month of April, the following prices for all 3.7% milk delivered at country stations listed below. These prices are subject to the usual butterfat differential and can charges.

Zone	12	N. Walpole, N.H.	\$2.072	cwt.
44 -	18	Randolph, Vt.	2.039	" .
	22	Waterbury, Vt.	2.01	44
44	22	Skowhegan, Me.	2.01	"
"	22	Newport, Me.	2.01	"
. 84	24	Harmony, Me.	2.001	"
**		Colebrook, No H.	2.001	44
	-			

Butterfat differential \$.036

If competitive conditions in this market reach a point where a drop is inevitable, your elected representatives will be called into Boston to discuss the situation.

WHITING MILK COMPANY

Boston, Massachusetts May 5, 1937

To Our Producers:

The Whiting Milk Company proposes to pay for the month of May, the following prices in the following zones for all milk containing 3.7% butterfat. These prices are subject to butterfat differential and can charges where necessary.

N. Walpole, N. H.	Zor	ne 12	\$1.957	cwt.
Randolph, Vt.	46	18	1.925	"
Skowhegan, Me.	. 64	22	1.90	4.6
Newport, Me.		22	1.90	
Waterbury, Vt.	4.6	22	1.90	* 44
Colebrook, N.H.	44	24	1.892	
Harmony, Me.		24	1.892	46 -

These prices are based on current market conditions. It is expressly understood that no changes will be made in these prices unless your representatives first come to Boston to discuss any conditions that may in the future arise which would warrant further adjustment.

WHITING MILK COMPANY

Boston, Massachusetts June 14, 1937

To Our Producers:

Based on present market conditions, the Whiting Milk Company proposes to pay for the month of June, the following prices for all 3.7% milk delivered at country stations listed below. These prices are subject to the usual butterfat differential and can charges.

Zone	12	N. Walpole, N.H.	\$1.907	cwt.	
. 66	18	Randolph, Vt.	1.875	66	
.66	22	Waterbury, Vt.	1.85	66	
44	22	Skowhegan, Me.	1.85	66 .	
,616	22	Newport, Me.	1.85	44 .	
6.6	24	Harmony, Me.	1.842	. 44	,
160	25	Colebrook, N.H.	1.842	6.6	

Butterfat differential \$.032.

If competitive conditions in this market reach a point, where a drop is inevitable, your elected representatives will be called into Boston to discuss the situation.

WHITING MILK COMPANY

Boston, Massachusetts July 8, 1937

To Our Producers:

The prices listed below reflect an increase of 35¢ cwt. for Class I Milk which became effective July 1.

Based on present market conditions, the Whiting Milk Company proposes to pay for the month of July, the following prices for all 3.7% milk delivered at country stations

listed below. These prices are subject to the usual butterfat. differential and can charges.

2	Zone	12	N. Walpole, N.H.	\$2.3361	cwt.
	w	18	Randolph, Vt.	2.2984	:66.
*	"	22	Waterbury, Vt.	2.2702	66
. 0	66	22	Skowhegan, Me.	2.2702	"
	- 66	22	Newport, Me.	$2.27\tilde{0}2$	66.
	44	24	Harmony, Me.	2.2608	66
	66	25	Colebrook, N.H.	2.2608	"

Butterfat differential \$.04

If competitive conditions in this market reach a point where a drop is inevitable, your elected representatives will be called into Boston to discuss the situation.

WHITING MILK COMPANY

Boston, Massachusetts July 29, 1937

To Our Producers:

Based on present market conditions, the Whiting Milk Company proposes to pay for the month of August, subject to the provisions contained in this letter, the following prices for all 3.7% milk delivered at country stations listed below. These prices are subject to the usual butterfat differential and can charges.

Zone.	.12	N. Walpole, N.H.	\$2.364	cwt.
66	18	Randolph, Vt.	2.325	44
- 66	22	Waterbury, Vt.	2.296	66
64	22	Skowhegan, Me.	2.296	4.6
. 44	22	Newport, Me	$\hat{2}.296$	66
- 66	24	Harmony, Me.	2.287	66
66	25	Colebrook, N. H.	2.287	6.6

Butterfat differential \$.04

Last November we wrote you that effective with Decem-

ber deliveries we would announce a month in advance the prices that we would pay for milk to be delivered during the following month. We have followed this procedure ever

since that time. The prices mentioned above are the prices that we propose to pay for the month of August in event that we are not subject to Federal Order.

We wish to call your attention to the fact that the Secretary of Agriculture has purported to reinstate the Federal Order which was in effect in this market last August, and he has conducted a referendum with reference to certain amendments to this order. If the Secretary proposes to enforce this order we shall be obliged to abide by it until it has either been rescinded or until it has been held invalid by some court of competent jurisdiction. The effect of the order being valid would mean that we would not be able to pay our producers the prices listed above, but would be forced to pay an equalized price.

We are sending you this information so that there will be no misunderstanding in your mind in the event that the. Federal Order is enforced.

WHITING MILK COMPANY

WHITING MILK COMPANY

August 31, 1937

Until further notice the Whiting Milk Company announced that it will pay directly to producers for all 3.7 milk delivered by producers to its country plants during the month of September—the uniform price announced by the Milk Administrator under order #4.

Doubts have been expressed as to the validity of order #4 and it is expected that the order will be litigated before the Secretary of Agriculture and before the Courts.

If Whiting Milk Company participates in this litigation it will resist payment over by it into the Administrator's Pool of the amount in dollars equal to the difference between (a) the cost to the Company of its milk in accordance with its use at the classified prices, specified in the order and (b) its direct payments to producers.

If the company is successful in withholding these amounts and the withholding is ultimately sustained by the courts, Whiting Milk Company agrees to make further payment to its producers on account of the milk delivered by them, so as to adjust the price for September Milk to the following:

Zone		Z	one	
12 North Walpole	e=2.3442	. 18	Randolph	2.3065
23 Skowhegan	2.2783.	23	Waterbury	2.2783
23 Newport	2.2783	24	Colebrook	2.2695
24 Harmony	2.2695			

Whiting Milk Company reserves the right to discontinue any litigation against the order at any time, and in the event of such discontinuance, no price adjustment as above can or will be made:

Any litigation against the order may extend over a considerable period of time and no price adjustment can be made until the litigation is definitely and successfully terminated.

WHITING MILK COMPANY

WHITING MILK COMPANY

October 1, 1937

Until further notice the Whiting Milk Company announces that it will pay directly to producers for all 3.7 milk delivered by producers to its country plants during the month of October, the uniform price announced by the Milk Administrator under Order No. 4.

Doubts have been expressed as to the validity of Order No. 4, and a hearing is now being held by the Secretary of Agriculture reviewing the Order.

The Whiting Milk Company is participating in this hearing and is resisting payment into the Administrator's Pool of the amount in dollars equal to the difference between (a) the cost to the Company of its milk in accordance with its use at the classified prices specified in the Order, and (b) its direct payments to producers.

If the Company is successful in withholding these amounts and the withholding is ultimately sustained by the courts, Whiting Milk Company agrees to make further payment to its producers on account of the milk delivered by them, so as to adjust the price for September milk to the following:

Zon	e ·	1.	
12	N. Walpole	\$2.3504	cwt.
$\cdot 22$	Skowhegan .	2.2884	66
22	Newport	2.2884	"
24	Harmony	2.2775	44
18	Randolph	2.3138	. 66
22	Waterbury	2.2884	. 66
24	Colebrook	2.2775	.66

Whiting Milk Company reserves the right to discontinue any litigation against the Order at any time, and in the event of such discontinuance, no price adjustment as above can or will be made.

Any litigation against the Order may extend over a considerable period of time and no price adjustment can be made until the litigation is definitely and successfully terminated.

WHITING MILK COMPANY

WHITING MILK COMPANY

November 3, 1937

Until further notice the Whiting Milk Company announces that it will pay directly to producers for all 3.7% milk delivered by producers to its country plants during the month of November, the uniform price announced by the Milk Administrator under Order No. 4.

Doubts have been expressed as to the validity of Order No. 4, and the whole issue is now being heard in the courts, in the suit brought by the Secretary of Agriculture against the Whiting Milk Company.

The Whiting Milk Company is resisting payment into the Administrator's Pool of the amount in dollars equal to the difference between (a) the cost to the Company of its milk in accordance with its use at the classified prices specified in the Order, and (b) its direct payments to producers.

If the Company is successful in withholding these amounts and the withholding is ultimately sustained by the courts, Whiting Milk Company agrees to make further payment to its producers on account of the milk delivered by them so as to adjust the price for November milk to the following:

Zone				
12	N. Walpole		\$2.3729	cwt.
18	Skowhegan	- * * * .	2.3343	. 66
22	Newport 7		2.3072	44
24:	Harmony	٠	2.2963	66
18	Randolph		2.3343	44
22	Waterbury		2.3072	66
24	Colebrook		2.2963	66 -

Whiting Milk Company reserves the right to discontinue any litigation against the Order at any time, and in the event of such discontinuance, no price adjustment as above can or will be made.

Any litigation against the Order may extend over a considerable period of time and no price adjustment can be made until the litigation is definitely and successfully terminated.

WHITING MILK COMPANY

WHITING MILK COMPANY

December 2, 1937

Until further notice the Whiting Milk Company announces that it will pay directly to producers for all 3.7% milk delivered by producers to its country plants during the month of December, the uniform price announced by the Milk Administrator under Order No. 4.

Doubts have been expressed as to the validity of Order No. 4, and the whole issue is now being heard in the courts, in the suit brought by the Secretary of Agriculture against the Whiting Milk Company.

The Whiting Milk Company is resisting payment into the Administrator's Pool of the amount in dollars equal to the difference between (a) the cost to the Company of its milk in accordance with its use at the classified prices specified in the Order, and (b) its direct payments producers.

If the Company is successful in withholding these amounts and the withholding is ultimately sustained by the courts, Whiting Milk Company agrees to make further payment to its producers on account of the milk delivered by them so as to adjust the price for December milk to the following:

Zon	e ·	 4		
12	N. Walpole		\$2.3587	cwt.
22	Skowhegan		2.2961	44
23	Newport		2.2961	44.
24	Harmony	4	2.2850	* ,,
18	Randolph		2.3216	44
22	Waterbury	 4	2.2961	44
25	Colebrook		2.2850	44

Whiting Milk Company reserves the right to discontinue any litigation against the Order at any time, and in the event of such discontinuance, no price adjustment as above can or will be made.

Any litigation against the Order may extend over a considerable period of time and no price adjustment can be made until the litigation is definitely and successfully terminated.

WHITING MILK COMPANY

Exhibits

EXHIBIT 27.

WHITING MILK COMPANY

3.7% MILK

Delivery Pe	eriod		Announced 22d Zone Blended Price to Non- Members*	22d Zone Prices Posted in Whiting Plant Notices	Difference Between Col. 1 and Col. 2
August	1-15	;	\$2.067	\$2.296	\$.229
August.	16-31	4	2.095	2.296	.201
September	1-15		1.876	2.2783	.4023
September			1.859	2.2783	.4193
October	1-15		1.846	2.288	.442
October .	16-31		2.007	2.288	.281
November	1-15		2.206	2.3072	.1012
November	16-30		2.260	2.3072	.0472
December	1-15		2.241	2.2961	.0551
December	16-31		2.104	2.2961	.1921

^{*} After deducting two cents paid Administrator under the provisions of Sec. 1 of Article IX of the order.

Exhibit No. 28 is omitted by stipulation of the parties. It will be certified to the Appellate Court as an original exhibit.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,

DISTRICT OF MASSACHUSETTS, SS.

I, James S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the three volumes, entitled as follows:

Volume I., Pleadings;
Volume II., Report of Special Master
(Findings of Facts)
Volume III., Report of Special Master
(Exhibits Appended)

constitute the transcript of the record on the appeals of the defendants, including true copies of such proofs, entries and papers on file as have been designated by the stipulation of parties as to the contents of the record on appeal, in the cause entitled

No. 4519, EQUITY DOCKET,

UNITED STATES OF AMERICA AND HENRY A. WALLACE,
SECRETARY OF AGRICULTURE, PLAINTIFFS,

H. P. HOOD & SONS, INC., ET AL., DEFENDANTS,

in said District Court determined.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, at Boston, in said District, this twenty-first day of March, A. D. 1939.

[SEAL]

JAMES S. ALLEN, Clerk.

CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the three volumes, entitled as follows:

Volume I., Pleadings;

Volume II., Report of Special Master (Findings of Fact); Volume III., Report of Special Master (Exhibits Appended)

this certificate being attached to each of said three volumes, contain and are a true copy of the record and all proceedings to, and including, March 22, 1939, in the cause in said court numbered and entitled,

No. 3445.

H. P. HOOD & SONS, INC., ET AL., DEFENDANTS, APPELLANTS,

UNITED STATES OF AMERICA ET AL., PLAINTIFFS, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twenty-second day of March, A. D. 1939.

[SEAL]

ARTHUR I. CHARRON, Clerk.

FILE COPY

No 772

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MAR 24 1939

ONARLES ELMORE CROPLEY

In the Supreme Court of the Anited States

OCTOBER TERM, 1938

H. P. Hood & Sons, Inc. and Noble's Milk Company,

PETITIONERS

V.

UNITED STATES OF AMERICA and HENRY A. WALLACE, SECRETARY OF AGRICULTURE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

CHARLES B. RUGG,
WARREN F. FARR,
ARCHIBALD COX,
Counsel for Petitioners

DECREE IS BOLD CO., PRINTERS, DOCTOR

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In the Supreme Court of the United States

OCTOBER TERM, 1938

No.

H. P. Hood & Sons, Inc. and Noble's MILK COMPANY,

PETITIONERS

v.

UNITED STATES OF AMERICA and HENRY A. WALLACE, SECRETARY OF AGRICULTURE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

The petitioners, H. P. Hood & Sons, Inc. and Noble's Milk Company, pray that a writ of certiorari issue to bring before this Court the above cause which is now pending before the Circuit Court of Appeals for the First Circuit on appeal from the District Court for the District of Massachusetts and which has not been submitted to, heard or decided by that Court.

OPINIONS BELOW

The opinion of the District Court for the District of Massachusetts, dated February 23, 1939, granting a permanent injunction and ordering the payment of certain moneys is not yet reported but is printed R. Vol. I, pp. 116-131. The prior opinion of that court, dated November 19, 1937, granting a temporary injunction is reported at 21 F. Supp. 321 sub nomine United States et al v. Whiting Milk Company and is printed R. Vol. I, pp. 107-114. The opinion and order of the Circuit Court of Appeals for the First Circuit, dated June 24, 1938, continuing both the temporary injunction and an order for supersedeas issued by the Senior Circuit Judge of that court are reported at 97 F. (2d) 677 and are printed R. Vol. I, pp. 114-116.

JURISDICTION

The decree of the District Court sought to be reviewed was entered March 9, 1939. The cause was docketed in the Circuit Court of Appeals March 21, 1939. The jurisdiction of this court is invoked under Section 240(a) of the Judicial Codeas amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

- 1. Whether the Agricultural Marketing Agreement Act of 1937 unconstitutionally delegates legislative power to the Secretary of Agriculture.
- 2. Whether the market-wide equalization or pooling device authorized by the Act and established by Order No. 4 regulating the handling of milk in the Boston, Massachusetts, area is (a) a proper exercise of the power to regulate interstate commerce and (b) in accordance with the guarantees of the Fifth Amendment.

3. Whether Sections 8c (17) and 8e of the Act required, and the Secretary made, in connection with the issuance of the amended Order No. 4 using the post-war base period, a finding and proclamation of the unavailability of statistics for the prewar base period established by Section 2(1).

4. Whether the Secretary's determination that amended Order No. 4 was approved by the requisite majority of producers was in accordance with law and in compliance with Sections 8c (9), (12) and

(19) of the Act.

5. Whether the Act sanctions an order which permits associations qualified under the Capper-Volstead Act to be included as handlers in a market-wide equalization pool.

6. Whether the Market Administrator improperly included in the equalization pool milk of persons who were not producers within the meaning of Article I, Section 1, of the amended order.

STATUTE AND ORDER INVOLVED

The statute involved is the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246) which re-enacts and amends some of the provisions of the Agricultural Adjustment Act of 1933 (48 Stat. 31) as amended by Act of August 24, 1935 (49 Stat. 750). It is set out in the Appendix, *infra*. pp. 13-32.

The order involved is Order No. 4 as amended by the order of the Secretary of Agriculture dated July 28, 1937. A compilation of the order incorporating the amendments is printed R. Vol. II, pp. 59-75.

STATEMENT

On October 1, 1937 the plaintiffs-respondents filed their bill of complaint in the District Court for the District of Massachusetts to enjoin the Detitioners from violating Order No. 4, as amended, regulating the handling of milk in the Greater Boston, Massachusetts, marketing area. alleged that the petitioners were engaged in handling milk in the current of interstate commerce or that directly burdened such commerce, that Order No. 4 and the amendments thereto were validly issued by the Secretary of Agriculture and in force, and that the petitioners were subject to the terms thereof. Preliminary and permanent injunctions were prayed for (R. Vol. I, pp. 2-13). On November 30, 1937 the District Court issued a temporary mandatory injunction which was superseded on December 8, 1937 by order of the Senior Circuit Judge of the First Circuit upon condition that the petitioners deposif in the registry of the District Court the amounts billed to them by the Market Administrator by reason of obligations imposed by amended Order No. 4. Upon appeal from the temporary injunction, the Circuit Court of ·Appeals for the First Circuit continued the supersedeas pending a final determination on the merits on appeal (97 F. (2d) 677). Under these orders \$1,564,471.17 due to one group of producers or another, has been deposited in the registry of the District Court.

Petitioners' answers alleged the unconstitutionality of the Agricultural Marketing Agreement Act, the invalidity of Order No. 4 and the amendments thereto both in respect to their terms and the

manner of their issuance, and that no sums were due from them under the amended order because it had been improperly administered (R. Vol. I. pp. 23-48). E. Frank Branon, a producer selling milk to H. P. Hood & Sons, Inc., filed a petition for leave to intervene as a party defendant and his petition was allowed by the court (R. Vol. I, p. 68). The cause together with twenty-seven companion cases was referred to a Special Master to find the basic facts. On January 27, 1939 after more than sixty days of actual trial the Special Master's report was filed (R. Vol. I, p. 77; Vols. II and III). On February 23, 1939 the District Court rendered an opinion holding that the Act does not delegate legislative power to the Secretary of Agriculture, that the equalization or pooling device is constitutional, that the order and amendments were properly issued in respect to the determination of producer approval and in respect to the findings as. to the base period, and that the administration of the amended order was proper so far as the definition of a producer was involved. Petitioners filed their written waiver of the issues not decided by the District Court, and on March 9, 1939 the final decree was entered enjoining the petitioners from violating Order No. 4 as amended on July 28, 1937 and ordering the clerk to pay the sums deposited in the registry to the Market Administrator for him to distribute in accordance with the decree. On the same day petitioners filed their notice of appeal to the Circuit Court of Appeals for the First Circuit and orders for supersedeas were entered. March 21, 1939 the cause was docketed in that court.

REASONS FOR GRANTING THE WRIT

The public interest will be promoted by the prompt consideration by this Court of the questions in this controversy.

1. All the questions presented are important questions of federal law which have not been but should be decided by this Court. They concern the constitutionality of the Agricultural Marketing Agreement Act of 1937 and the proper administrative procedure thereunder, bringing before the Court the basis of federal regulation of the entire dairying industry and an integral part of the agrarian program. Hence all the issues are vital to dairymen; some of them precisely and others broadly are equally important to producers and distributors of fruits, vegetables, tobacco and other agricultural commodities.

The Act is patterned upon the National Industrial Recovery Act; it delegates to the Secretary of Agriculture powers in respect to agriculture similar to the powers in respect to industry which that statute delegated to the President. They are equally unlimited. The Secretary is authorized to issue, among others, milk orders fixing prices, discouraging production, regulating trade practices and equalizing in one of several ways payments by handlers to producers. He may regulate one or all of these and less important matters to whatever extent, whenever and wherever he chooses. single expressed guide is that any order issued shall "tend to effectuate the declared policy" of the Act -to return the farmer to his status of a quarter century ago by raising the purchasing power of his products to parity with their level during that

period, whilst at the same time protecting the interest of the consumer by doing it no more rapidly than is "in the public interest and feasible in view of economic conditions". Here is a roving commission to aid agriculture—the goal has definiteness in theory only—coupled with an injunction to act wisely and consider conflicting interests. The injunction is not a definitive standard to which the exercise of the delegated power must conform, hence the decision below is probably wrong and is certainly not in harmony with Panama Refining Co. v. Ryan, 293 U. S. 388 and A. L. Schechter Corp. v. United States, 295 U. S. 495.

The second issue of constitutional law is fundamental. The critical regulation in the Boston milk order is a market-wide equalization pool. It recognizes the fact that the value of milk sold for use as a fluid is greater than the value of milk sold for manufacturing, and secures each producer an equal share in the market for fluid milk and forces each to sell an equal share in the market for manufactured milk. Each handler who sells more than the market average of fluid milk and who normally. would pay more to producers supplying it to him. first must pay them what would have been its value put to the market average of use, and second must pay the remaining part of its actual value not to the producers who supplied it but to other producers whose milk had a smaller use value. Such exactions appear to be unconstitutional both under the commerce clause and under the Fifth Amendment, Railroad Retirement Board v. Alton R.R., 295 U. S. 330; Thompson v. Consolidated Gas Utilities Corp., 300 U. S. 55. The issue has importance even

beyond the confines of dairying, for the principle of equalization is founded upon the theory that the gross income of an industry shall be evenly distributed by regulatory exactions from one group within it for the benefit of another.

The other questions presented concern chiefly the promulgation and terms of orders, hence they are common to all the orders which have been or will be issued under the Act. One, for example, is the question of what is a proper basis for an administrative determination that a proposed order is approved by the required majority of producers. Since administrative regulation under recent statutes depends upon such determinations. the manner in which they should be made is an important question of federal law which has not been and should now be decided by the Court. Another involves the interpretation of the statute and the question what constitutes a proper administrative "finding". Sections 8e and 8c(17) of the Act, as the District Judge held, require that when the Secretary of Agriculture abandons the primary base established by Section 2(1) and uses the post-war base period for the purposes of an order or amendments he shall in connection with their issuance first find and proclaim the unavailability of statistics for the pre-war period. The post-war base was used for the purposes of Order No. 4 and an express finding was made under Section 8e. It was not required to be made upon evidence introduced at a hearing and does not appear to have been made (R. Vol. II, pp. 6, 7.) When the Secretary radically amended the order he reaffirmed "the findings made upon the evidence introduced

at the hearing" on the original order (R. Vol. II, p. 48). The District Court held that this recital was a sufficient present "finding and proclamation" of the unavailability of statistics. Plainly, if Sections 8c(17) and 8e require a "finding" in the normal sense, the decision conflicts with the principles applicable to other administrative bodies (United States v. Chicago, M. & St. P. Ry., 294 U. S. 499, 510; Atchison Ry. v. United States, 295 U. S. 193, 202; Mahter v. Eby, 264 U. S. 32, 44; Panama Refining Co. v. Ryan, 293 U. S. 388, 433-34).

2. The public interest requires a final determination of these issues promptly. Orders regulating the handling of milk have been issued in twenty-seven principal urban markets. Frequent litigation has been the result and it has already produced a contrariety of judicial opinion. The decision of the District Court in this case, for example, conflicts with the decision of the District Court for the Northern District of New York in *United States et al* v. *Rock Royal Cooperative*, *Inc. et al*, now pending on a direct appeal in this Court.

A present decision upon these fundamental issues would terminate most if not all of such litigation. Its postponement would continue and spread into additional areas the chaos resulting from dubiety already apparent in New England (see opinion of the District Court, R. Vol. I, pp. 116, 125-126). There is now impounded in the registry of the District Court in this case alone over one and one-half million dollars which will be distributed to farmers upon any ultimate decision. In similar cases in the same court there is impounded

another million. Should the decree of the District Court be reversed and the bill dismissed, the impounded moneys would be paid by the petitioners to more than 3,500 producers (R. Vol. II, p. 216) under their contracts of sale (R. Vol. III, Exh. 20, 22, pp. 210-244). Should the decree be affirmed all the moneys in the court registry would be spread among 18,000 producers in accordance with the decree (R. Vol. II, p. 90). For a year and a half those amounts have been withheld from a none too affluent class and represent for each farmer the difference between a fair income and genuine hardship. Moreover, since dairying is a principal occupation in New England (R. Vol. II, pp. 90-92) and since Boston is the primary market (R. Vol. II, p. 87), the welfare of that section is inextricably entwined with the immediate release of those sums. The situation engendered by delay in this case is representative of the conditions in the other milksheds and markets where the issues are open and being litigated. Here, as in Carter v. Carter Coal Company, 298 U.S. 238, the writ should be granted in advance of consideration by the Circuit Courts of Appeals on account of the importance of the issues and the disadvantage of delay.

3. There is now pending in this Court the case of United States et al v. Rock Royal Cooperative, Inc., et al, on a direct appeal from a decree dismissing the government's bill to enforce a milk order similar to the one involved in the instant case. The grounds of that decision were first, that the order was never properly promulgated and second, that the Act as applied therein violates the Fifth Amendment. That case also raises questions of

statutory interpretation and of delegation of legislative power similar but not identical to the questions raised by the instant case. The desirability of a contemporaneous consideration of two cases which raise related questions of national importance and one of which is already before the Court, is an added reason for granting the writ. *United States* v. *Banker's Trust Co.*, 294 U. S. 240.

Such consideration would enable the Court to view all the facets of the fundamental issues in broad perspective. For example, whereas the Rock Royal case raises the question of the constitutionality of an equalization scheme in which cooperative associations are included as handlers and draw special bounties, the record in the instant case raises the question which should first be considered. whether the Act authorizes the inclusion of cooperatives in such a pool. Again, taken together they manifest the operation of the single scheme of equalization in different markets and with varying details. And, the issues in respect to the validity of the Secretary's determinations of producer approval are a single question of statutory construction which may best be decided with the various factual situations before the Court. In other respects the two cases are equally complementary.

This Court has emphasized the importance of a complete presentation of the economic facts involved in grave issues of constitutional law. Borden's Farm Products Co. v. Baldwin, 293 U. S. 194. The Master's report in the instant case is a compendium of the history, organization and problems of the dairying industry. It also indicates the practical meaning of the parity concept and the

other standards established to guide the Secretary in the exercise of the powers delegated to him, the actual results of equalization during a seven months' period, and the factual aspects of the questions of statutory construction. Such facts were not emphasized in the Rock Royal case; they are not stated in the Court's findings of fact nor discussed in its opinion. Since the issues raised are of the utmost gravity, a record containing in appropriate form the economic background of the statutes and orders should be before the Court when it decides them.

Wherefore, it is respectfully submitted that this petition should be granted and the case set down for argument immediately following *United States* et al v. Rock Royal Cooperative, Inc.

CHARLES B. RUGG, F WARREN F. FARR, ARCHIBALD COX, Counsel for Petitioners

March, 1939.

Division of Marketing and Marketing Agreements

ANNOTATED COMPILATION

OF

AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

REENACTING, AMENDING, AND
SUPPLEMENTING THE AGRICULTURAL
ADJUSTMENT ACT, AS AMENDED



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1927

PREFATORY NOTE

This compilation is intended to indicate the present status of legislation by Congress relating to marketing agreements and orders regulating the handling of agricultural commodities in interstate and foreign commerce. The Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public, No. 137—75th Congress—Chap. 296, 1st Session), reenacted and amended certain provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders. Related legislation enacted prior to June 3, 1937, is given in the compilation known as "Annotated Compilation of the Agricultural Adjustment Act, as Amended, and Acts Relating Thereto at the Close of the First Session of the Seventy-Fourth Congress, August 26, 1935"; Superintendent of Documents, Washington, D. C.

Throughout the text of this compilation, bold face type is used for the language of the Agricultural Marketing Agreement Act of 1937; light face type is used for the language of the Agricultural Adjustment Act, as amended, as reenacted by the Agricultural Marketing Agreement Act of 1937; italics are used for amendments made by section 2 of the Agricultural Marketing Agreement Act of 1937 to

the Agricultural Adjustment Act, as amended.

The provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are not set out hace verba. They are, however, incorporated in the body of the provisions of the Agricultural Adjustment Act, as amended, which they amend. References to the amendatory provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are contained in the annotations.

ANNOTATED COMPILATION OF AGRICULTURAL MARKETING AGREEMENT ACT OF 1937 REENACTING, AMENDING AND SUPPLEMENTING THE AGRICULTURAL ADJUSTMENT ACT. AS AMENDED.

AN ACT

To reenact and amend provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the following provisions of the Agricultural Adjustment Act, as amended, not having been intended for the control of the production of agricultural commodities, and having been intended to be effective irrespective of the validity of any other provision of that act are expressly affirmed and validated, and are reenacted without change except as provided in section 2:

(a) Section 1 (relating to the declaration of emergency);

DECLARATION

It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the nor. Il channels of interstate commerce.2

(b) Section 2 (relating to declaration of policy);

DECLARATION OF POLICY

Sec. 2. It is hereby declared to be the policy of Congress-

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for agricultural commodities/in interstate commerce as will establish a prices to farmers at a level that will give agricultural commodities a purchasing power with respect

"DECLARATION OF EMERGENCY

"That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is breeply declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act."

The kalicized words were substituted, by sec. 2 (b) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish".

¹ For annotations to the Agricultural Adjustment Act, as amended; for provisions of that act not remacted by the provisions of the Agricultural Marketing Agreement Act of 1937; and for other acts of Congress relating both to the Agricultural Adjustment Act, as amended, and to the Agricultural Marketing Agreement Act of 1937 see "Annotated Compilation of Agricultural Adjustment Act as Amended and Acts Relating Thereto at the Close of the First Session of the 74th Congress, August 26, 1935"; Superintendent of Documents, Washington, D. C.

² As amended by sec. 2 (a) of the Agricultural Marketing Agreement Act of 1937. The text of sec. 1 of the Agricultural Adjustment Act, as amended, was as follows:

to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period. August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August 1909—July 1914. In the case of tobacco, and potatoes, the base period shall be the postwar period, August 1919—July 1929.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congres to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this

section.

(c) Section 8a (5), (6), (7), (8), and (9) relating to violations and enforcement;

SEC. 8a(5) Any person willfully exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture, and any other person knowingly participating, or aiding, in the exceeding of said quota or allotment, shall forfeit to the United States a sum 'equal to three times the current market value of such excess, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

of the United States.

(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.

in any proceeding now pending or hereafter brought in said courts. (7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or

in equity.

⁴ The following was deleted by section 2 (c) of the Agricultural Marketing Agreement Act of 1937: ", the provisions of this section, or of".

(9) The term "person" as used in this title includes an individual, partnership, corporation, association, and any other business unit.

(d) Section 8b (relating to marketing agreements);

SEC. 8b. In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or The making of any such agreement shall not be product thereof. held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: Provided. That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

(e) Section 8c (relating to orders);

ORDERS

Sec. 8c. (1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

COMMODITIES TO WHICH APPLICABLE

(2) Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores), or to any regional, or market classification of any such commodity or product: Milk, fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning), tobacco; vegetables (not including vegetables, other than asparagus, for canning) soybeans and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin).

NOTICE AND HEARING

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

FINDING AND ISSUANCE OF ORDER

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

TERMS-MILK AND ITS PRODUCTS

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: Provided, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; of

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by

the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order. (b) the grade or quality of the milk delivered. (c) the locations at which delivery of such milk is nade, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk during a representative period of time.

The word "production" was deleted and the word "marketings" was substituted by section 2 (d) of the Agricultural Marketing Agreement Act of 1937.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the

prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (E) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefore from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for

milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act", engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided; That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the

United States.

TERMS-OTHER COMMODITIES

(6) In the case of fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning) and their products, tobacco and its products, vegetables (not including vegetables, other than asparagus, for canning) and their products, soybeans and their products, and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin), orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size,

or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period or periods, under a uniform rule based upon the amounts sold by such producers in such prior period as the Secretary determines to be representative, or upon the current quantities available for sale by such producers, or both, to the end that the total quantity thereof to be purchased or handled during any specified period or periods shall be

apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers and handlers

thereof.

(E) Establishing, or providing for the establishment of, reserve pools of any such commodity or product or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

TERMS COMMON TO ALL ORDERS

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade

practices in the handling thereof.

The words "produced or" were deleted by section 2 (e) of the Agricultural Marketing Agreement Act of 1937.
The italicized words were substituted, by section 2 (e) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "production or sales of".

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining

their powers and duties, which shall include only the powers:

 (i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and

provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amend-

ments to such order.

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of section 10 (g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to

effectuate the other provisions of such order.

ORDERS WITH MARKETING AGREEMENT

(8) Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection (8) shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: Provided, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of

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such commodity for sale in the marketing area specified in such

marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

ORDERS WITH OR WITHOUT MARKETING AGREEMENT

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative as ociations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursu-

ant to the declared policy, and is approved or favored;

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such

commodity sold within the marketing area specified in such marketing agreement or order.

MANNER OF REGULATION AND APPLICABILITY

(10) No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be sued under this title prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement.

REGIONAL APPLICATION.

(11) (A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity, or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional production areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently

with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

COOPERATIVE ASSOCIATION REPRESENTATION

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity; as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

RETAILER AND PRODUCER EXEMPTION

(13) (A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

VIOLATION OF ORDER

(14) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than \$50 or more than \$500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, That if the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15).

PETITION BY HANDLER AND REVIEW

(15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall

be final, if in accordance with law.

(B) The District Courts of the United States (including the Supreme Court of the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business. are hereby vested with jurisdiction in equity to review such ruling. provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15) shall abate whenever final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15);

TERMINATION OF ORDERS AND MARKETING AGREEMENTS

(16) (A) The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provi-

(B) The Secretary shall terminate any marketing agreemen intered into under section .8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: Provided, That such majority have, during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more. than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) The termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

PROVISIONS APPLICABLE TO AMENDMENTS

(17) The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.

Milk Prices

(18) The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain, in accordance with section 2 and section 8e, the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period. The level of prices which it is declared to be the policy of Congress to establish in section 2 and section 8e shall, for the purposes of such agreement, order, or amendment, be such level as will reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand, for milk or its products in the marketing area toppchich the contemplated marketing agreement, order, or amendment relates. Whenever the Sec. retary finds, upon the basis of the evidence adduced at the hearing required by section 8b or 8c, as the case may be, that the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period as determined pursuant to section 2 and section 8e are not reasonable in view of the price of feeds. the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, making adjustments in such prices."

PRODUCER REFERENDUM

(19) For the purpose of ascertaining whether the issuance of an. order is approved or favored by producers, as required under the applicable provisions of this title, the Secretary may conduct a referendum among producers. The requirements of approval or favor under any such provision shall be held to be complied with if of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. Nothing in this subsection shall be construed as limiting representation by cooperative associations as provided in subsection (12).9

(f) Section 8d (relating to books and records);

BOOKS AND RECORDS

SEC. Sd. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, to furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the antitrust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or

O This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agree ment Act of 1937.

**This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement Act of 1937.

such handler or (3) of any subsidiary of any such party, handler,

or person.

(2) Notwithstanding the provisions of section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A). the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

(g) Section 8e (relating to determination of base period);

DETERMINATION OF BASE PERIOD

Sec. Se. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period for the purposes of such marketing agreement or order, shall be the post-war period. August 1919—July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.

(h) Section 10 (a), (b) (2), (c), (f), (g), (h), and (i) (miscellaneous provisions);

MISCELLANEOUS

Sec. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations. Provided, That no salary in excess of \$10.000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title: And provided

further, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropriations contained in this Act.

(b) (2) 10 Each order issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency. during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses pavable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several District Courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title.11 Any violation of any regulation shall be subject to such penalty, not in excess of \$100, as may be provided therein.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; except that, in the case of sugar beets and sugar cane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam.12

(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling.

³⁸ Sec. 10 (b) (2) of the Agricultural Adjustment Act, as amended.
³¹ Sec. 2 (g) of the Agricultural Marketing Agreement Act of 1937 deletes the following:

", including regulations establishing conversion factors for any commodity and article processed therefrom to determine the amount of tax imposed or refunds to be made respect thereto.

³² Sec. 2 (h) of the Agricultural Marketing Agreement Act of 1937 deletes the sentence:

"The President is authorized to attach by Executive order any or all such possessions to any internal-revenue collection district for the purpose of carrying out the provisions of this title with respect to the collection of taxes".

processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than \$10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to any person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: Provided, That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof.

(j) The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this Act (but in nowise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within

the State and the shipment outside the State of the products so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. As used herein, the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nations.18

(i) Section 12 (a) and (c) (relating to appropriation and expense);

APPROPRIATION

Sec. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for payments authorized to be made under section & Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions.14 with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the market for the dairy and beef cattle industries, there is authorized to be appropriated. out of any money in the Treasury not otherwise appropriated, the sum of \$200,000,000: Provided, That not more than 60 per centum of such amount shall be used for either of such industries.

(c). The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and re unds made by such department or agencies in the administration of this title.

(j) Section 14 (relating to separability);

SEPARABILITY OF PROVISIONS

SEC. 14. If any provisions of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

(k) Section 22 (relating to imports);

IMPORTS

SEC. 22. (a) Whenever the President has reason to believe that any one or more articles are being imported into the United States

³³ This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement Act of 1937.
14 Sec. 2 (i) of the Agricultural Marketing Agreement Act of 1937 deletes the words:
"and production adjustments".

under such conditions and in sufficient quantities as to render or tend to render ineffective or materially interfere with any program or operation undertaken, or to reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title, or the Soil Conservation and Domestic Allotment Act, as amended, he shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties and shall be conducted subject to such regulations as the President shall specify.

(b) 'f, on the basis of such investigation and report to him of findings ad recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such limitations on the total quantities of any article or articles which may be imported as he finds and declares shown by such investigation to be necessary to prescribe in order that the entry of such article or articles will not render or tend to render ineffective or materially interfere with any program or operation undertaken, or will not reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title or the Soil Conservation and Domestic Allotment Act, as amended: Provided, That no limitation shall be imposed on the total quantity of any article which may be imported from any country which reduces such permissible total quantity to less than 50 per centum of the average annual quantity of such article which was imported from such country during the period from July 1, 1928, to June 30, 1933, both dates inclusive.

(c) No import restriction proclaimed by the President under this section nor any revocation, suspension, or modification thereof shall become effective until fifteen days after the date of such proclamation, revocation, suspension, or modification.

(d) Any decision of the President as to facts under this section shall be final.

(e) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended by the President whenever he finds that the circumstances requiring the proclamation or provision thereof no longer exists, or may be modified by the President whenever he finds that changed circumstances require such modification to carry out the purposes of this section.15

Sec. 2. The following provisions, reenacted in section 1 of this act, are amended as follows: 16

Sec. 3. (a) The Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated

¹³ Sec. 5 of Public, No. 461, 74th Cong., approved February 29, 1936, amended sec. 22 of the Agricultural Adjustment Act, as amended, by inserting after the words "this title", wherever they appeared, the words "or the Soil Conservation and Domestic Allotment Act, as amended, ; and by deleting the words "an adjustment", wherever they appeared, and inserting in lieu thereof the word "any".

¹⁸ Subsections (a) to (j) inclusive, of section 2 of the Agricultural Marketing Agreement Act of 1937 are incorporated in the preceding text and in footnotes 2 to 9 inclusive and 11 to 14 inclusive, supra.

by him, upon written application of any cooperative association. incorporated or otherwise, which is in good faith owned or controlled by producers or organizations thereof, of milk or its products, and which is bona fide engaged in collective processing or preparing for market or handling or marketing (in the current of interstate or foreign commerce, as defined by paragraph (i) of section 2 of this act), milk or its products, may mediate and with the consent of all parties, shall arbitrate if the Secretary has reason to believe that the declared policy of the Agricultural Adjustment Act, as amended, would be effectuated thereby, bonsfide disputes, between such associations and the purchasers or handlers or processors or distributors of milk or its products, as to terms and conditions of the sale of milk or its products. The power to arbitrate under this section shall apply only to such subjects of the term or condition in dispute as could be regulated under the provisions of the Agricultural Adjustment Act, as amended, relating to orders for milk and its products.

(b) Meetings held pursuant to this section shall be conducted subject to such rules and regulations as the Secretary may

prescribe.

(c) No award or agreement resulting from any such arbitration or mediation shall be effective unless and until approved by the Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, and shall not be approved if it permits any unlawful trade practice or any unfair method of competition.

(d) No meeting so held and no award or agreement so approved shall be deemed to be in violation of any of the antitrust laws of

the United States.

Sec. 4. Nothing in this act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to, or any provision of, or any act of the Secretary of Agriculture in connection with, any such agreement, license, or order which has been executed, issued, approved, or done under the Agricultural Adjustment Act, or any amendment thereof, but such marketing agreements, licenses, orders, regulations, provisions, and acts are hereby expressly ratified, legalized, and confirmed.

Sec. 5. No processing taxes or compensating taxes shall be levied or collected under the Agricultural Adjustment Act, as amended. Except as provided in the preceding sentence, nothing in this act shall be construed as affecting provisions of the Agricultural Adjustment Act, as amended, other than those enumerated in section 1. The provisions so enumerated shall apply in accordance with their terms (as amended by this act) to the provisions of the Agricultural Adjustment Act, this act, and other provisions of law to which they have been heretofore made applicable.

Sec. 6. This act may be cited as the "Agricultural Marketing

Agreement Act of 1937."

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In the Supreme Court of the United States

OCTOBER TERM, 1938

E. FRANK BRANON,

PETITIONER,

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UNITED STATES OF AMERICA and HENRY A. WALLACE, SECRETARY OF AGRICULTURE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

EDWARD F. MERRILL,

Counsel for Petitioner.

In the Supreme Court of the United States

OCTOBER TERM, 1938

No.

E. FRANK BRANON,

PETITIONER,

v.

UNITED STATES OF AMERICA and HENRY A. WALLACE, SECRETARY OF AGRICULTURE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

Now comes E. Frank Branon, intervening defendant in the case of H. P. Hood & Sons, Inc. and Noble's Milk Company, Petitioners v. United States of America and Henry A. Wallace, Secretary of Agriculture, now pending on a writ of certiorari before this Court, No. 772, October Term 1938, and prays that a writ of certiorari issue to bring before this Court the appeal of said intervener in said cause which is now pending before the Circuit Court of Appeals for the First Circuit. The record on which the instant petition is based is the same as that in the Hood case and is, therefore, now before this Court.

The petitioner, E. Frank Branon, a producer of milk in Fairfield, Vermont, has sold and delivered milk to H. P. Hood & Sons, Inc. for about twenty-five years (R. Vol. II, p. 224). He was permitted to intervene as a party defendant in the case as

representative of all producers selling to the petitioner H. P. Hood & Sons, Inc. (R. Vol. I, p. 68; Vol. II, pp. 224, 225) and participated throughout the trial. By his answer (R. Vol. I, pp. 68-77) he asserted the unconstitutionality of the Agricultural Marketing Agreement Act of 1937 and the invalidity of Order No. 4 and amendments thereto, alleged that the continued enforcement of the amended Order would cause pecuniary injury to producers selling to H. P. Hood & Sons, Inc., and prayed that the bill of complaint be dismissed. The final decree entered on March 9, 1939 denied the intervener's prayer for relief (R. Vol. I, p. 106) and commanded and directed H. P. Hood & Sons, Inc. to comply with all the provisions of Order No. 4 as amended on July 28, 1937 (R. Vol. I, p. 102). The intervener appealed to the Circuit Court of Appeals for the First Circuit on March 9, 1939 (R. Vol. I, pp. 106, 132, 140).

This petitioner submitted a memorandum in support of the petition for a writ of certiorari filed by H. P. Hood & Sons, Inc. and Noble's Milk Company, urging that the writ be granted. It is assumed that the granting of the writ on that application brought the entire cause, including the appeal of this petitioner, before this Court. But to avoid any procedural question on that point, this petition is filed.

The opinions below, jurisdiction of this Court, and the statute and marketing order involved are set out in the petition of H. P. Hood & Sons, Inc. and Noble's Milk Company.

QUESTIONS PRESENTED

1. Whether the provisions of the Agricultural Marketing Agreement Act of 1937 and of Order No. 4, as amended, regulating the handling of milk in the Boston, Massachusetts, marketing area, which establish a market wide equalization or pooling device, deprive the petitioner and the other producers of whom he is representative of their property without due process of law and take their property for public use without just compensation in violation of the Fifth Amendment.

2. Whether, in computing the price to be paid to producers, the Market Administrator violated the provisions of the Amended Order by including in the market wide pool the milk of persons who were not producers within the meaning of Article

I, Section 1 of the Amended Order.

REASONS FOR GRANTING THE WRIT

The petitioner does not seek to raise questions additional or foreign to the issues now before the Court in the case of H. P. Hood & Sons, Inc., et al. v. United States et al. But the questions whether the equalization provisions of the Amended Order are constitutional and whether the Market Administrator complied with the provisions of that order in operating the market wide equalization pool are presented by the principal defendants in that case only so far as they bear upon the interests of the milk dealer. The effect of these provisions and of the Administrator's action is also significant from the standpoint of the producer. It was in order to raise that aspect of the questions in the

case that this petitioner was originally permitted to intervene as a party defendant. All parties in interest in the *Hood* case and the other related cases now before this Court' desire that the decision in these causes settle the validity of the agricultural program with respect to milk in all its aspects. A final determination of the validity of the Amended Order here in issue requires a consideration of its effect upon the producer. That phase of the problem will be presented only if the producer is before the Court.

If this petition is granted, it is suggested that this case be consolidated for argument with H. P. Hood & Sons, Inc., et al. v. United States et al., No. 772.

Wherefore it is respectfully submitted that this petition should be granted.

Edward F. Merrill, Counsel for Petitioner.

¹United States et al. v. Rock Royal Cooperative, Inc. et al., No. 771: Whiting Milk Company v. United States et al., No. 809.

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In the Supreme Court of the Antes States

OCTOBER TERM, 1938.

Nos. 772 and 865.

H. P. Hood & Sons, Inc. and Noble's Milk Company,

Petitioners

V

UNITED STATES OF AMERICA AND
HENRY A. WALLACE, SECRETARY OF AGRICULTURE,
Respondents

E. FRANK BRANON,

Petitioner

UNITED STATES OF AMERICA AND

HENRY A. WALLACE, SECRETARY OF AGRICULTURE,

Respondents

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PETITIONERS, H. P. HOOD & SONS, INC., NOBLE'S MILK COMPANY, AND E. FRANK BRANON

CHARLES B. RUGG,
Counsel for H. P. Hood & Sons,
Inc. and Noble's Milk Company.

EDWARD F. MERRILL, Counsel for E. Frank Branon.

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In the Supreme Court of the Anited States Octobes Term, 1938.

Nos. 772 and 865

H. P. Hood & Sons, Inc. and Noble's Milk Company,

Petitioners

United States of America and Henry A. Wallace, Secretary of Agriculture, Respondents

E. FRANK BRANON,

Petitioner

United States of America and
Henry A. Wallace, Secretary of Agriculture,
Respondents

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PETITIONERS, H. P. HOOD & SONS, INC., NOBLE'S MILK COMPANY, AND E. FRANK BRANON

OPINIONS BELOW

The opinion of the District Court for the District of Massachusetts, dated February 23, 1939, is not yet reported but is printed in B. Vol. I, pp. 116-131. The prior opinion of that court, dated November 19, 1937, granting a temporary injunction is reported in 21 F. Supp. 321,

sub nomine United States et al. v. Whiting Milk Company, and is printed in R. Vol. I, pp. 107-114. The opinion and order of the Circuit Court of Appeals for the First Circuit, dated June 24, 1938, continuing both the temporary injunction and an order for supersedeas issued by the Senior Circuit Judge of that court, are reported in 97 F. (2d) 677 and are printed in R. Vol. I, pp. 114-116.

JURISDICTION

The decree of the District Court was entered March 9, 1939. The cause was docketed in the Circuit Court of Appeals on March 21, 1939. The petition of H. P. Hood & Sons, Inc. and Noble's Milk Company for a writ of certiorari was filed on March 24, 1939 and was granted on March 27, 1939. The petition of E. Frank Branon was filed on April 12, 1939 and was granted on April 17, 1939. The jurisdiction of this Court rests on Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATUTE AND ORDER INVOLVED

The statute involved is the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246; 7 U. S. C. §§601 et seq.) which re-enacts and amends some of the provisions of the Agricultural Adjustment Act of 1933 (48 Stat. 31) as amended by Act of August 24, 1935 (49 Stat. 750). It is set out in Appendix E, infra.

The order involved is Order No. 4 as amended by the order of the Secretary of Agriculture dated July 28, 1937. A compilation of the order incorporating the amendments is printed R. Vol. II, pp. 59-75 and is also set out in Appendix F, infra.

QUESTIONS PRESENTED

- 1. Whether the Agricultural Marketing Agreement Act of 1937 unconstitutionally delegates legislative power to the Secretary of Agriculture.
- 2. Whether the market-wide equalization or pooling device, authorized by the Act, and established by amended Order No. 4, deprives the petitioners of their property without due process of law, in violation of the Fifth Amendment.
- 3. Whether the amended Order No. 4 is invalid because the Secretary issued the amendments, based on the post-war base period, in disregard of section 2 of the Act without making in connection with their issuance the finding and proclamation required by sections 8c(17) and 8e.
- 4. Whether the sums demanded were due although the Market Administrator improperly included in the equalization pool milk of persons who were not producers within the meaning of Article I, Section 1, of the amended Order.
- 5. Whether the Secretary's determination that amended Order No. 4 was approved by the requisite majority of producers was in accordance with law and in compliance with sections 8c(9), (12) and (19) of the Act.

¹This question, raised in our specification of errors to be urged, is not discussed in this brief. We adopt the arguments advanced on this point in the brief submitted by petitioners in Whiting Milk Company v. United States, et al., No. 809, and by the appellee, Central New York Cooperative, in United States, et al. v. Rock Royal Cooperative. et al., No. 771, as stated in footnote 3, page 24, infra.

I. PROCEEDINGS BELOW.

On October 1, 1937 the plaintiffs-respondents filed their bill of complaint in the District Court for the District of Massachusetts to enjoin the petitioners H. P. Food & Sons, Inc. and Noble's Milk Company from violating Order No. 4, as amended, regulating the handling of milk in the Greater Boston, Massachusetts, marketing area. The bill alleged that the defendants were engaged in handling milk in the current of interstate commerce or that directly burdened such commerce, that Order No. 4 and the amendments thereto were validly issued by the Secretary of Agriculture and in force, and that the defendants were subject to the terms thereof. Preliminary and permanent injunctions were prayed for (R. Vol. I, pp. 2-13). On November 30, 1937 the District Court issued a temporary mandatory injunction (R. Vol. I, p. 65), which was superseded on December 8, 1937 by order of the Senior Circuit Judge of the First Circuit upon condition that the defendants deposit in the registry of the District Court the amounts billed to them by the Market Administrator by reason of obligations imposed by amended Order No. 4 (R. Vol. I, pp. 66, 67). Upon appeal from the temporary injunction, the Circuit Court of Appeals for the First Circuit continued the supersedeas pending a final determination on the merits on appeal (97 F. (2d) 677). Under these orders \$1,564,471.17 has been deposited by H. P. Hood & Sons, Inc. and Noble's Milk Company in the registry of the District Court (R. Vol. I, p. 131).

Defendants' answers alleged the unconstitutionality of the Agricultural Marketing Agreement Act, the invalidity of Order No. 4 and the amendments thereto, both in respect to their terms and the manner of their issuance, and that no sums were due from them under the amended Order because it had been improperly administered (R. Vol. I, pp. 23-48).

E. Frank Branon, petitioner in case No. 865, a producer selling milk to H. P. Hood & Sons, Inc., applied for leave to intervene as a party defendant as the representative of all Hood producers and such leave was granted by the court (R. Vol. I, p. 68, Vol. II, p. 225). By his answer (R. Vol. I, pp. 68-77) he asserted the unconstitutionality of the Agricultural Marketing Agreement Act of 1937 and the invalidity of Order No. 4 and amendments thereto, alleged that the continued enforcement of the amended Order would cause pecuniary injury to producers selling to H. P. Hood & Sons, Inc., and prayed that the bill of complaint be dismissed.

The cause, together with twenty-seven companion cases, was referred to a Special Master to find the basic facts. On January 27, 1939 after more than sixty days of actual trial the Special Master's report was filed (R. Vol. I, p. 77; Vols. II and III). On February 23, 1939 the District Court rendered an opinion holding that the Act does not delegate legislative power to the Secretary of Agriculture, that the equalization or pooling device is constitutional, that the order and amendments were properly issued in respect to the determination of producer approval and in respect to the findings as to the base period, and that the administration of the amended Order was proper so far as the definition of a producer . was involved. The defendants Hood and Noble filed their written waiver of the issues not decided by the District Court (R. Vol. I, p. 101), and on March 9, 1939 the final decree was entered enjoining them from violating Order No. 4, as amended on July 28, 1937, ordering the clerk to pay the sums deposited in the registry to the Market

Administrator for him to distribute in accordance with the decree, and denying the intervener Branon's prayer for relief (R. Vol. I, pp. 102-106). On the same day the defendants and the intervener filed their notice of appeal to the Circuit Court of Appeal's for the First Circuit and orders for supersedeas were entered (R. Vol. I, pp. 132, 133). On March 21, 1939, the cause was docketed in that court.

The petition of H. P. Hood & Sons, Inc. and Noble's Milk Company for a writ of a certiorari was filed on March 24, 1939 and granted on March 27, 1939. The petition of E. Frank Branon was filed on April 12, 1939 and granted on April 17, 1939.

II. STATUTE INVOLVED.

The purpose of the Agricultural Marketing Agreement Act of 1937, fully and frankly set out in section 2, is to raise the purchasing power of farm products to their level during the so-called "base period", and no higher, by creating and maintaining orderly marketing conditions in interstate commerce, and, at the same time, to protect the interest of the consumer by raising the purchasing power of farm products only as rapidly as is feasible in view of the current consumptive demand and in the public interest. This purpose is to be attained through exercise of the power delegated to the Secretary of Agriculture to enter into marketing agreements with persons engaged in handling agricultural commodities in interstate commerce and to issue orders with respect to such handling of these commodities. The base period for all commodities except tobacco and potatoes is to be the pre-war period, August 1909-July 1914. There is one exception. Section Se provides that, if the Secretary in connection with the making of a marketing agreement or the issuance

of an order finds and proclaims that satisfactory statistics are not available to show the purchasing power of the commodity in the pre-war base period, then the base period for the purposes of such agreement or such order shall be August 1919-July 1929 or the portion of that period for which statistics are available.

The machinery for the attainment of this goal is established by the following sections of the Act. Section 8b authorizes the Secretary of Agriculture to enter into marketing agreements with handlers and producers. Section 8c authorizes him to issue orders applicable to all persons engaged in the handling in interstate commerce of specified commodities in a given area. It is the latter section which is principally involved in the present case.

Section 8c(1) grants the general power to issue and amend orders. Section 8c(2) lists the commodities to which orders may be applied, one of them being milk. Next follow certain prerequisites to the valid issuance of orders. The Secretary must give timely notice of and hold a hearing upon any proposed order (section 8c (3)); and after the hearing, and upon the basis of the evidence introduced thereat, he must find that the issuance of the order and all its terms will tend to effectuate the declared policy of the Act (section 8c(4)).

Section 8c(8) requires that before orders become effective a marketing agreement shall first have been signed by the handlers of 50% of the volume of the commodity to be regulated and further that the Secretary shall have determined that the order is approved by two-thirds of the producers. But by the exception contained in section 8c(9), however, the Secretary is permitted to issue an order in spite of the refusal of handlers to sign such an agreement if he determines, first, that the refusal of handlers to sign an agreement prevents effectuation of

the policy of the Act, second, that the issuance of the order is the only practicable means of advancing the interests of the producers, and third, that the order is approved either by two-thirds of the producers producing the commodity for sale in the marketing area to be defined by the order or by the producers of two-thirds of the volume of such commodity sold in the area. To make that determination the Secretary may—as he did in the present case—conduct a referendum among producers (section 8c(19)). But, however the determination is made, he must consider the approval or disapproval of a cooperative association of producers as the approval or disapproval of its members (section 8c(12)).

The permissible terms in an order regulating the handling of milk are set forth in sections 8c(5) and 8c(7). Such an order must contain one or more of the terms listed in those sections and no others.

The first term (section 8c(5)(A)) is one classifying milk in accordance with its use and fixing prices, uniform as to all handlers, payable to producers, for each classification. Under such a term, the price each farmer received for his milk would be governed by the use to which it was put by the handler (i.e., dealer) who bought it. For example, the farmer whose milk was sold for consumption as fluid milk would be paid one price and the farmer whose milk was sold as butter would be paid another.

The second term (section 8c(5)(B)(i)) provides that a handler shall pay a uniform price to all producers or associations of producers selling milk to him. Since under an order embodying the first term, the handler would be obligated to pay for his milk at the use class prices, and since he commingles the milk of various producers delivering to him, it is impossible for him to tell the use to which milk purchased from any particular producer

is put. Under the second permissible term, therefore, he is required to determine his total financial obligation at the class prices and to divide that figure by the total number of units of milk he has bought. The result is a composite price which he must pay to each producer for each unit of milk delivered to him. The Secretary may not insert this term in an order unless three-fourths of all the producers agree.

The third permissible term (section 8c(5)(B)(ii)) is an alternative to the second. It provides for payment to all producers and associations of producers in the market of uniform prices irrespective of the uses made of their milk by the individual handler to whom they deliver it. Standing alone this term would simply impose upon all handlers the obligation to pay a uniform flat price for all milk delivered to them. If, however, it is used in an order embodying the first permissible term, i.e., the requirement that each handler pay on the basis of his own use of milk, there would be an apparent inconsistency. Handlers would pay on one basis, producers receive on another. The group of dealers whose milk had a use value higher than the amount they would be required to pay at the uniform prices would pay less than the use value of their milk. Others, whose milk had a lower use value would be required to pay more. The fourth term (section 8c(5)(C)), which the Secretary might include, would fill the gaps by compelling the first group to pay to the second the difference between the amounts it had paid to its producers and the full use value of its milk. In the end, therefore, producers would receive uniform prices and cach handler would pay out the use value of his milk.

Neither the second nor the third term listed, however, must be included with the first.

The fifth permissible term (section 8c(5)(D)) authorizes the Secretary to require payments to new producers entering the market to be made at the lowest class price.

The sixth term (section 8c(5)(E)) deals with a new subject. An order may provide for market information to producers and for sundry other services.

The other terms which may be included in milk orders are not described by the Act in as great detail. The Secretary may include any term prohibiting unfair methods of competition or unfair trade practices (section 8c(7)(A)). He may designate an agency to administer his order (section 8c(7)(C)). Finally, he may include any incidental term necessary to effectuate the others (section 8c(7)(D)).

The Secretary may not include any term not listed in the Act (section 8c(5)). Neither may be provide marketing services for members of cooperative associations (section 8c(5)(E)), nor may such an association be prevented from treating the proceeds of its sales in accordance with its contract with its members (section 8c(5)(F)). Furthermore, there may be no regulation of the handling of milk in an area which would limit the marketing there of milk products produced elsewhere in the United States (section 8c(5)(G)). Other prohibitions are listed in sections 8c(10), (11) and (13), but they are immaterial to the present case.

Having spelled out the prerequisites and contents of milk orders, section 8c of the act then goes on to deal with the questions which would subsequently arise. Provision is made for the punishment of violations of any order (section 8c(14)) and for administrative review of any order or obligation imposed thereunder (section 8c(15)). Then, section 8c(16) directs the Secretary to terminate or suspend an order or any provision of an order if he finds that it does not tend to effectuate the policy of the

act or if he finds that more than half the producers are dissatisfied with the order.

Up to this point the act defines the powers of the Secretary and the limitations thereon in terms of original orders. Section 8c(17) however, covers the possibility of amendments by providing that the provisions of sections 8c, 8d and 8e applicable to orders shall be applicable to amendments to orders.

The remaining provisions of the Act have no relevance to the instant case.

III. THE ORDER INVOLVED.

A. THE PROMULGATION AND AMENDMENT OF ORDER No. 4.

The order of which the bill asked enforcement is the result of a series of administrative steps culminating in "Order No. 4 as amended" which became effective August 1, 1937. It is set out in full in the master's report (Vol. II, pp. 59-75) and is reprinted in Appendix F, infra.

Original Order No. 4 was promulgated February 7, 1936, after appropriate notice of hearings, hearings and findings by the Secretary under sections 8c(3) and 8c(4) of the Act (R. Vol. II, pp. 4-15). Prior to issuance of the order the Secretary, acting pursuant to section 8e, found and proclaimed that satisfactory statistics showing the purchasing power of milk during the base period established by section 2 of the Act (the pre-war period, 1909-1914) were not available and that the base period "for the purpose of . . . the issuance of an order" should be the post-war period, August, 1919-July, 1929 (R. Vol. II, p. 6, par. 4). The Secretary also made the appropriate determinations required by section 8c(9) of the Act (R. Vol. II, p. 7, par. 5).

On August 1, 1936, following an adverse court decision,2 the Secretary wholly suspended Order No. 4 for an indefinite time. From that date till July 1, 1937, almost a year later, no regulation was in force in the Boston area (R. Vol. II, pp. 36, 40, 41, par. 7, 10). On June 19, 1937, however, steps were taken to put an order in force. Notice of hearings on a proposed new order was given but on June 24th the notice was cancelled and supplanted by a notice of hearings upon proposed amendments to Order No. 4 (R. Vol. II, pp. 37-43, par. 8, 9, 11). The next day, June 25th, the Secretary issued an order entitled "Termination of Suspension of Order No. 4" which purported to terminate the suspension of some provisions effective as of July 1st and of others, the price-fixing provisions, as of August 1, 1937 (R. Vol. II, p. 40, par. 10).

After the hearings upon the proposed amendments, the Secretary tentatively approved a proposed marketing agreement which handlers of more than 50% of the volume of the milk to be covered by the agreement failed to sign (R. Vol. II, p. 44, par. 13). Thereupon, the Secretary issued a determination stating first, that the failure of the handlers to sign the proposed agreement tended to prevent effectuation of the declared policy of the Act; second, that the issuance of amendments to the order was the only practical means of advancing the interests of milk producers in the area; and third, that. the issuance of amendments was approved by over 70% of the producers who during May, 1937 had been engaged in the production of milk for sale in the marketing area (R. Vol. II, p. 44, par. 14). Such determinations are essential to the validity of an order or amendments issued without a marketing agreement (section 8c(9)).

² United States v. David Buttrick Co., 15 F. Supp. 655.

The determination of producer approval was made upon the basis of a referendum conducted by the Secretary under section 8c(19) of the Act (R. Vol. II, p. 195). In the referendum each producer in New England who had delivered any milk in May, 1937 to a country receiving station which was licensed to ship fluid milk into any city or town in the Greater Boston area and which shipped either milk or cream into that area in May, 1937 was entitled to one vote. The percentage shipped from a plant was considered immaterial (R. Vol. II, p. 202, par. 202, 203). On the other hand, producers throughout the south and mid-west who delivered their milk to plants shipping a large percentage of their receipts into the area in the form of cream were not permitted to vote (R. Vol. II. p. 204, par. 207-209). Cooperative associations of producers voted as a unit by their respective Boards of Directors; the members were not requested by the Boards or the Secretary to express their opinions (R. Vol. II, pp. 198, 199). Finally, it should be noted that on each ballot there was printed a statement that unless the amendments were approved no price regulation would be enforced (R. Vol. III, pp. 160, 161). That was done in spite of the fact that the Secretary had terminated the suspension of original Order No. 4 effective as to the price-fixing provisions on August 1, 1937.

Immediately after he made the determination of producer approval on the basis of this referendum, the Secretary issued an "Order . . . amending Order No. 4". In doing so he referred to the procedural steps he had taken in promulgating the amendments, formally made the findings required by section 8c(4) of the Act, and reaffirmed those findings which he had made upon the evidence introduced at the hearings on the original order (R. Vol. II, pp. 46-49). He made no findings and proclamations other than those mentioned above (R. Vol. II,

p. 75, par. 17). Particularly, he did not make an express finding or proclamation that satisfactory statistics were not then available to show the purchasing power of milk in the pre-war base period, although in formulating the amendments he used the post-war period as a base.

B. THE BACKGROUND OF THE AMENDED ORDER AND THE PROBLEM WITH WHICH IT DEALS.

The primary provisions of the amended Order are those classifying and valuing milk in accordance with its use by the handler, fixing a minimum price for milk disposed of in fluid form (Class I), establishing a formula for fixing such a price for milk disposed of in non-fluid form (Class II), and setting up a market-wide pool for equalizing among all producers in the Boston market the proceeds of all sales of fluid milk in that market. Understanding of the purpose of these provisions and the mechanics adopted to carry them out will perhaps be aided by first considering the price problem in the Boston market raised by the existence of so-called "surplus" milk. Accordingly, before describing the terms of the amended Order in further detail, we turn to a brief discussion of that question.

Milk, although apparently a simple and homogeneous commodity, is disposed of in the market in a variety of forms, and it is with the problem of distributing the gains from the sales of milk in these various forms that the equalization provisions of the amended Order attempt to deal. A prime form in which milk is disposed of is as fluid milk. It is also disposed of in the form of cream, of butter, of cheese, of ice-cream, and of skim milk products. Milk disposed of as fluid milk has always commanded a higher price in the Boston market than milk of disposed of in the form of cream, butter or other manu-

factured products (R. Vol. II, p. 97). In the first place, fluid milk costs more to produce because the producer must meet various health requirements, such as the use of cooling apparatus, sanitary precautions and the like, which are not applicable to the production of milk for cream or for manufacturing purposes (R. Vol. II; pp. 111, 112). In the second place, cream and manufactured milk products of New England must compete with similar products of milk produced in other parts of the United States and shipped into the Boston market (R. Vol. II, p. 97). Whereas the supply of fluid milk in the Boston market is pretty much confined to New England (R. Vol. II, p. 78), the supply of cream, butter and the like is drawn from the whole United States (R. Vol. II, pp. 80-86, 97).

This disparity in price would not seriously affect the producer of milk for disposal in fluid form were it not for the fact that there is a surplus of fluid milk in the market. This surplus is due on the one hand to the perishable character of milk and on the other hand to seasonal variations in production and fluctuations in demand. Although the demand for fluid milk is relatively constant, there are day-to-day and seasonal variations, and, since milk cannot be stored, there must always be a surplus of about 20 to 25 per cent of the total supply to meet the peak demand (R. Vol. II, pp. 94, 96). amount of milk produced varies greatly throughout the year, reaching its lowest point in November and its highest peak in June (R. Vol. II, p. 92). The number of cows necessary to produce 20 to 25 per cent surplus over demand at the low point of production in November will normally produce a much larger quantity in other seasons (R. Vol. II, p. 96). Thus, in 1937 the surplus was only the necessary amount of 25 per cent in November, but it had been 40 per cent in August (R. Vol. II, p. 96). This surplus, originally produced for sale as fluid milk, must be disposed of in the market in other forms, such as cream, butter and the like. As to the portion of his product which cannot be disposed of as fluid milk, the producer is affected by the lower price of these other commodities.

Of course, the producer does not sell part of his milk to one dealer as fluid milk and part to another dealer as cream or butter. The dealers operating in the market buy milk as milk and dispose of it both in fluid form and as cream or in other manufactured form. And the producer sells milk to a dealer in fluid form not knowing what use he will make of it. Generally until about 1913 the dealers paid a flat price for all milk delivered—that is, a single fixed price announced in advance of the sale, based presumably upon estimates of how the milk would be utilized (R. Vol. II, p. 123). Thereafter, however, there developed the use price plan, whereby the dealer agreed to pay at one rate for milk used for fluid (and, hence, more profitable) purposes and at a different rate for milk used for non-fluid purposes (R. Vol. II, pp. 96, 122, 124). Milk disposed of as fluid milk was commonly denominated Class I milk and milk otherwise disposed of, Class II milk (R. Vol. II, p. 96). Under this system. guess-work as to how profitably the milk could be disposed of by the dealer was eliminated and the return to the producer was based on actual disposal. But since all milk is delivered to the dealer's plant in fluid form and commingled there with other milk, it is impossible to tell whether the milk of any particular producer is ultimately used by the dealer as Class I or Class II milk. Hence, the use of class prices necessitates a "dealer pool" whereby the dealer figures a composite price based on his average fluid and non-fluid sales at the respective class rates agreed upon and pays each producer that price (R.

Vol. II, pp. 122, 123). This system of classified prices and dealer pools prevailed generally in the Boston market from 1918 to the initiation of Federal regulation in 1933 (R. Vol. II, pp. 96, 124-129).

Since the composite price received by a producer was dependent upon the ratio of the dealer's fluid milk sales to his total sales, there has been a natural tendency on the part of producers to compete for a market for their milk through dealers having a high percentage of fluid sales (R. Vol. II, p. 98). In the absence of governmental control of prices, this competition has from time to time depressed the Class I price, and consequently the return to all producers (R. Vol. II, pp. 98, 99). Producers not having established outlets through such dealers, of course, have brought pressure to acquire a share in those outlets. From 1930 plans have from time to time been suggested to secure a market-wide pool of all sales and thus give to all producers a share in the fluid milk outlets of the entire market. These have all failed because of lack of approval by enough producers to make them feasible. (R. Vol. II, pp. 130-133). With the initiation of Federal regulation in the market, first through issuance of licenses in 1933 and 1934 and then through the original Order and the amended Order, the efforts of producers without established fluid outlets to attain a market-wide equalization pool met with success.

C. THE PROVISIONS OF AMENDED ORDER No. 4.

The provisions of the amended Order set up a comprehensive system of regulation in the charge of a Market Administrator. Article I defines the Greater Boston cities and towns to be the marketing area regulated, defines a handler as anyone who sells therein milk which is in the current of interstate commerce or directly bur-

dens or obstructs such commerce and defines a producer as anyone who produces milk in conformity with the health regulations applicable to the sale of fluid milk in the marketing area. Article II establishes the office of Market Administrator and prescribes the duties of its incumbent. Then follow the provisions which he is to administer.

Article III classifies milk in accordance with its use by the handler, defining Class I milk as milk sold as whole or flavored milk, and Class II milk as milk sold for any other purpose (i.e., cream, butter, evaporated milk, or casein, for example). This provision for use classification is in accordance with section 8c(5)(A) of the Act.

Article IV then provides for so-called "minimum prices" for each class of milk. The price for Class I milk is fixed and a formula is established for fixing the Class II price, which is to be computed and announced publicly by the Administrator at the end of each half-monthly delivery period. The formula is primarily based on the price of cream in Boston and casein in New York and reflects the competitive factors which, as we have shown, render the price of non-fluid milk lower than that of fluid or Class I milk.

Article V requires each handler to report for each delivery period the amount of milk he purchased and the amount of that total which he used or sold as Class I milk and the amount which he used or sold as Class II milk.

Article VII, section 1, requires the Administrator to compute for each period the "value" of all the milk purchased by the handler by multiplying the amount sold by him as Class I milk by the Class I rate and the amount sold as Class II by the Class II rate and adding the resulting value of each class. This total value is not distributed among the producers from whom the handler bought this milk under a "dealer pool", permitted

by section 8c(5)(B)(i) of the Act. Instead the amended Order adopts the principle of a market-wide pool, authorized by sections 8c(5)(B)(ii) and 8c(5)(C) of the Act. Under this scheme the Market Administrator computes a composite ded price based on the value of all the milk sold handlers in the market. The computation and announcement by the Administrator of this blended price is provided for in Article VII, section 2. Under Article VIII each handler is required to pay to each producer from whom he buys milk the blended price per hundredweight for the quantity of milk delivered by such producer. If the total amount he owes his producers is less than the "value" of his milk, computed under the provisions of Article VII, such handler must then pay the difference to the Administrator. This difference is the so-called equalization payment or producer settlement charge. If that amount is greater than the "value" of his milk, such handler receives from the Market Administrator the difference. Thus, under the provisions of this article the Market Administrator acts as a conduit to transfer the equalization payment from one handler or group of handlers to another. The provision for these equalization payments is authorized by section 8c(5)(C) of the Act: "a method for making adjustments as among handlers".

The practical operation of the provisions of Articles VII and VIII are shown by the actual computations described in the Master's Report (B. Vol. II, pp. 137-163), but the scheme may perhaps be more clearly explained by the following simplified illustration:

Assume that there are only two handlers, A and B, in the market and that the prices fixed by Article IV of the order are \$3.00 for Class I and \$1.50 for Class II. If Handler A purchased 200,000 cwt. of milk and sold 175,000 cwt. as fluid, or Class I, milk and 25,000 cwt. as

manufactured, or Class II, milk, the Administrator, in accordance with section 1 of Article VII, would compute the value of A's milk from A's reports made under Article V, as follows:

Class I 175,000 cwt. x \$3.00 = \$525,000. Class II 25,000 cwt. x 1.50 = $\frac{.37,500}{.562,500}$.

Total value for Handler A \$\frac{1}{5}62,500}.

If B purchased 150,000 cwt. and sold 50,000 cwt. as Class I and 100,000 cwt. as Class II, a similar computation would be made to determine the value of his milk:

Class I 50,000 cwt. x \$3.00 = \$150,000. Class II 100,000 cwt. x 1.50 = $\frac{150,000}{$300,000}$. Total value for Handler B \$\frac{\$300,000}{\$}.

Under section 2 of Article VII the Market Administrator then computes the "blended price" as follows: The total value of the milk in the market is computed by combining into one total the value of the milk for each handler (Art. VII, sec. 2, par. 1):

 Handler A
 \$562,500.

 Handler B
 300,000.

 Total
 \$862,500.

Then, this sum is divided by the total number of hundredweight sold by A and B, in order to obtain the "blended" price (Art. VII, sec. 2, par. 4):

 $$862,500 \div 350,000 \text{ cwt.} = $2.46 + \text{per cwt.}$

(Several calculations involving freight and other differentials are omitted; those given are the essence of the scheme.)

Under Article VIII, section 1, paragraph 1 both A and B must pay their respective producers the blended price per hundredweight. A will pay 200,000 cwt. x \$2.46 =

\$492,000, and B will pay 175,000 cwt. x \$2.46 = \$430,000. It will be noticed that A's payments to his producers will be less than the value assigned to his milk, whereas B's will exceed that value:

	Handler A		Handler B	1
Total Value	\$562,000.	4 1	\$300,000.	
Producer payments	492,000.		430,000.	370,000
	\$ 70,000	_	\$ 70,000.	

By paragraph 3 of Article VIII, section 1, A is required to pay that \$70,000 to the Market Administrator who turns a like sum over to B.

Articles IX and X of the amended Order deal with a different subject. The former requires each handler to deduct from the payments to his producers an amount to be determined by the Administrator and expended by him in rendering marketing services to producers. This term, inserted under the permission granted by section 8c(5)(E) of the Act, is not applicable to producers who are members of a cooperative association. Article X requires handlers to bear the expense of the order's administration in proportion to the quantity of milk they, buy; its inclusion is authorized by section 10(b)(2) of the Act.

SPECIFICATION OF ERRORS TO BE URGED

The petitioners specify all the assigned errors set out in their several statements of errors as the assigned errors intended to be urged, excepting only the ninth error assigned by the petitioner H. P. Hood & Sons, Inc. (R. Vol. I, pp. 137-141). They may be summarized as follows:

The District Court erred:

- 1. In entering a decree commanding the petitioners H. P. Hood & Sons, Inc. and Noble's Milk Company to comply with the provisions of Order No. 4 as amended on July 28, 1937 and directing the Clerk of the District Court to pay to the Market Administrator the monies deposited in the registry of the District Court in compliance with the interlocutory decree entered by the District Court on November 30, 1937, as modified and superseded by the decree and order of the Circuit Court of Appeals for the First Circuit entered on June 24, 1938 (97 F. (2d) 677).
- 2. In ruling that the Agricultural Marketing Agreement Act of 1937 does not unconstitutionally delegate to the Secretary of Agriculture the legislative power conferred upon the Congress in article 1, section 1 and section 8 of the Constitution.
- 3. In ruling that sections 8c(5)(A), 8c(5)(B)(ii) and 8c(5)(C) of the Agricultural Marketing Agreement Act of 1937, as applied by Article IV, Article VII and Article VIII, section 1, paragraph 3 of Order No. 4 as amended, are a valid exercise of the power to regulate interstate commerce and do not deprive the petitioners of their property without due process of law and without just compensation in violation of the Fifth Amendment.
- 4. In ruling that the amendments of July 28, 1937 to Order No. 4, for the purposes of which the Secretary of Agriculture used the post-war instead of the prewar base period, were validly issued although the Secretary did not make in connection with their issuance the express finding and proclamation which is required by sections 8c(17) and 8e of the Act.

- 5. In ruling that the Market Administrator acted in accordance with the terms of Order No. 4 as amended in including, in the computation of the blended price, milk delivered by farmers to a country plant approved by one or more of the towns in the marketing area for shipment of milk into the area, irrespective of whether such farmers had certificates of registration issued pursuant to sections 16A-16C of chapter 94 of the General Laws of. Massachusetts.
- 6. In ruling that the amendments of July 28, 1937 to Order No. 4 must be considered as validly issued in accordance with the Agricultural Marketing Agreement Act of 1937 although the determination of the Secretary of Agriculture required by section 8c(9) of the Act,—that the proposed amendments were approved by more than two-thirds of the producers producing milk or its products for the sale in the marketing area—was based solely upon a referendum conducted contrary to sections 8c(9), 8c(12) and 8c(19) of the Act in the following respects:
 - (a) a large number of producers who delivered their milk to stations shipping only cream to the marketing area in the representative period designated by the Secretary of Agriculture were not permitted to vote in said referendum whereas the votes of other producers who delivered their milk to stations shipping only cream into the marketing area in such period were counted in said referendum,
 - (b) votes of producers who delivered their milk to plants shipping less than 50% of their total milk receipts to the marketing area in said representative period were counted,
 - (c) the votes of all the members of New England Dairies, Inc. and of New England Milk Producers Association were counted in favor of said amendments

solely on the basis of a ballot cast by the board of directors of such organization,

(d) the votes of a substantial number of farmers who did not have certificates of registration issued pursuant to chapter 94, sections 16A-16C of the General Laws of Massachusetts were counted.

SUMMARY OF ARGUMENT

I.

The Agricultural Marketing Agreement Act of 1937 is not self-operative. It delegates the efficient regulatory power to the Secretary of Agriculture. Without adequate guidance from the Act, he alone decides whether, when and where to regulate the handling of a commodity such as milk. He alone, unlimited by a standard governing his selection from many choices, also prescribes a fundamental program of regulation. Taken as a whole, the Act delegates the plenary power to regulate the dairying industry and guides its exercise only by directing the Secretary to weigh the conflicting interests which the law-maker must resolve.

We shall not discuss this error in our brief. With respect to the faults mentioned in paragraphs (a), (b) and (d) of the assignment we adopt the brief submitted by the petitioners in Whiting Milk Company v. United States et al., No. 809. That case and this one arise upon the same facts (R. Vol. II, pp. 1, 4). With respect to the fault mentioned in paragraph (c), we refer the Court to pp. 31, 32 of the brief for the Central New York Cooperative Association, appellee, in United States et al. v. Rock Royal Cooperative, Inc. et al., No. 771. Cooperatives were permitted to vote and voted in the same manner both on proposed Order No. 27 and on the proposed amendments to Order No. 4. Had the votes cast by cooperatives for their members been eliminated in counting the votes or the amendments to Order No. 4, the required producer approval would not have been obtained (R. Vol. II, pp. 198-205).

The Secretary's power to choose the time for regulation is limited by the Act only by reference to the policy declared in section 2. One purpose is to raise the prices of farm products to a level that will give them a purchasing power equivalent to their purchasing power in the pre-war period. That purpose is only verbally precise. The parity concept cannot be applied in practice because the past and present purchasing power of milk produced in the Boston milkshed, for example, is unknown and unknowable. Consequently, the first part of the declared policy is in practice only an admonition to aid any group of producers whose status seems to need improvement. The Secretary cannot avoid deciding that question on the basis of his individual opinion. The second part of the declared policy requires the Secretary to protect the interest of the consumer by raising farm prices only as rapidly as is "in the public interest" and "feasible in view of current consumptive demand." Even if the parity concept were precise, therefore, the Secretary would issue or not issue orders accordingly as he believed that the interest of the farmer outweighed the interest of the consumer and that the regulation would be for the good of the community and prac-. ticable in the light of existing conditions. Moreover, the Secretary may issue any order when he finds it will "tend to achieve" the declared policy. Thus, the only finding which limits his discretion is a vague prophecy upon broad economic trends. The Act, therefore, neither establishes an extrinsic standard to guide the Secretary in deciding when there shall be regulation nor prescribes any facts upon the occurrence of which regulation must be invoked.

The Act also delegates to the Secretary power to choose a program of regulation. As the declared policy fixes no time for regulation so is it too vague to limit the choice from the schemes of regulation which it permits. But, were the declared policy a definite and specific requirement that the Secretary should raise farm prices at a precise rate, still the delegated powers would be excessive. The Secretary may properly be given power to fix reasonable prices and to adapt a legislative program to local circumstance. Under sections 8c(5) and 8c(7), however, any one or more of three fundamental programs of regulation may be established. First, the Secretary may assist the producers to acquire higher prices by bargaining with handlers. Second, he may indirectly stabilize the resale price structure. It immediately affects farm prices. Third, he may directly fix in one of several ways prices payable by dealers for milk delivered. The Act permits but does not require him to compel producers to share their fluid milk outlets. Each of these programs and any combination thereof is suited to achieving the objects of the Act. Therefore the Secretary must look beyond the declared purposes in formulating his orders and issue those which he believes to be politic. Manifestly the choice is between fundamental controls. The programs in operation would have vitally different affects upon both dealer and producer. Making the choice on the basis of his unconfined discretion the Secretary exercises law-making powers.

Congress easily could and should have formulated more complete legislation. It has done so in other more complicated fields, such as the field of transportation. It has established for the tobacco industry a comprehensive program. The Agricultural Marketing Agreement Act of 1937, however, is organic only. Traditionally and properly the law-maker has selected an ultimate objective from often antagonistic interests, has determined the occasion for seeking it which involves the smallest sacrifice of only slightly less desirable aims and has chosen

that program for attaining the objective which was most consistent with his view of the public interest. By this Act, Congress at the most fixed an ultimate goal—raising farm prices. Beyond that point the Act simply transfers the power to fix policies and then to formulate a definitive program for achieving them. The Secretary's duty even is legislative, the duty to consider the chief conflicting interests—those of the farmer in high and the consumer in low prices—and to resolve them into some program according to his view of practicability, "feasibility", and his synthesis of all antagonistic demands, "the public interest".

Π.

The equalization provisions of the amended Order deprive the petitioners of their property without due process of law. Those provisions have as their aim and effect a redistribution of purchasing power among all farmers in the milkshed by giving to each producer a pro rata share in the established fluid milk outlets now possessed by some. The Order adopts the system, generally prevailing in the Boston market prior to this regulation, of fixing different rates to be paid by a handler for milk disposed of by him as fluid milk, and milk disposed of for non-fluid purposes. But, by virtue of the equalitation provisions, producers selling to handlers with a high percentage of fluid use are deprived of part of the benefit of his fluid sales. They are paid only on the basis of the market average of fluid sales and the balance of the value of the milk they sell is transferred, by means of equalization payments, to handlers who have a less than market average of fluid sales. The fluid market is economically a limited one. Increase of the share of one group of handlers or producers therein can be attained only by decreasing the share others already have. In practical operation, the equalization scheme has reduced the net return to producers, like the petitioner Branon, who had established outlets for their product through handlers with a high percentage of fluid sales.

The scheme also has a significant economic effect upon such handlers. By requiring them to pay part of the use value of their milk by way of equalization charges to other handlers instead of to their own producers, they lose their ability to control their supply and are forced to furnish the means to their competitors to win away, the fluid milk market from them.

Moreover, the amended Order discriminates against proprietary handlers, who at present have the bulk of the fluid milk markets, and so are required to make equalization payments, in favor of cooperative associations. Under the provisions of the Act, such cooperatives cannot be required to make equalization payments themselves, and if they subsequently become the principal fluid milk distributors, the provisions of the amended Order for equalization payments cannot be enforced against them. They receive, but need not pay.

The effort to compel those having valuable fluid markets to give the benefits thereof to their rivals stands condemned under Thompson v. Consolidated Gas Utilities (p., 300 U. S. 55. The necessity of dealing with surplus so as to prevent destruction of commerce in milk through price cutting and disorderly marketing conditions does not sustain this redistribution of the fluid milk market. The quantity of surplus in the Boston market is no greater than during the period from 1919-1929, which, in this very Act, Congress has declared was a relatively normal period in which such commerce was free of burdens. Evidence that during the years preceding federal regulation surplus has led to price

cutting may justify the price fixing provisions of the amended Order, but it has no tendency to show that when minimum prices are fixed by law the surplus causes any further problem.

Fundamentally, the equalization provisions rest upon the doctrinaire conception that all differences in return are inequitable. They ignore the fact that producers with established fluid milk markets have earned them by taking their own steps to avoid the production of surplus milk. By fixing prices, the amended Order tends to stimulate further production and draw new producers into the already over-crowded market, thus imposing an ever increasing burden upon these producers in the name of fairness.

The equalization scheme cannot be sustained by analogy to workmen's compensation acts and bank deposit insurance acts which took comparatively insignificant, amounts of private property from employers and banks to assure that workmen and depositors would not be left remediless for losses caused to them without their fault by the insolvency of the particular employer or bank with whom they happened to deal. Here what is prorated is not loss to third persons but the profits accruing to some in the business. The decisions upholding those statutes did not lay down the sweeping principle that all banks or all employers could be treated as a single unit in order to insure that all would receive the same return from their businesses.

Nor do the decisions of this Court upholding the provisions of the Transportation Act of 1920 for a division of joint rates and recapture of excess earnings support the present scheme. Unlike the railroad, the producer or handler has not received a franchise as a quasi-monopoly obligating him to limit his profits to a fair and reasonable return upon the capital invested in his business. And

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even if he had, no attempt is here made to determine that what is left to him after diversion of a part of his market to others leaves him with the fair and reasonable profit to which even a public utility is constitutionally entitled.

Ш.

The basic policy and purpose of the Act, as declared in section 2, is to raise the purchasing power of certain agricultural commodities to the level of the pre-war years 1909-1914. That is the base period to be used in formulating any milk program under the statute. There is but one exception, based upon necessity. If the Secretary of Agriculture finds and proclaims in connection with the issuance of a marketing agreement or order that satisfactory statistics are not available to show the purchasing power of the commodity during the pre-war period, then, under section 8e, the base period "for the purposes of such order shall be" the post-war period 1919-1929. The Secretary made such a finding and proclamation in connection with the issuance of the original Order No. 4. He was required to, but did not, make a similar finding in connection with the issuance of amendments to that order, based, like the order itself, upon statistics for the post-war period.

The plain language of section 8e shows that a finding by the Secretary as to the unavailability of adequate statistics for the pre-war period does not permanently fix the post-war period as the base period for all purposes, but only for the purposes of the particular order in connection with which the finding was made. Manifestly a new order would require a new finding and proclamation. But amendments may differ from a new order in name only. That was clearly the case here. In form, these amendments were promulgated as an "order"

amending Order No. 4. In substance they were a new order also. For more than ten months Order No. 4 had been suspended and there had been no federal regulation of milk in Boston. The issuance of the amendments represented a new start. In the amended Order only the broad objective and a part of the administrative framework of the original order were preserved. The factors controlling determination of the blended prices to be paid by dealers and received by producers, which represent the crux of the plan of regulation selected, were radically altered. The amended Order in its most vital aspects and taken as a whole was new. Therefore, a new finding that satisfactory statistics for the pre-war period were not available, if such was the fact, should have been made and proclaimed. Congress throughout the Act recognized and preserved in the words the difference in substance between orders and amendments, using both words when it intended both to be included. In section Se it used the word "order" alone. A finding expressly declared to be effective "for the purposes of such order" cannot consistently with the statutory language be treated as effective for the purposes of amendments. Section 8e, since it creates an exception to the general rule of section 2, must be strictly construed.

Furthermore, the Act affirmatively requires a new section 8e finding to be made and proclaimed if post-war statistics are to be used for the purposes of amendments to an order. This is apparent, first, in the provisions concerning marketing agreements. Orders may be issued with or without executed marketing agreements. But even if a majority of the handlers have failed to execute an agreement, and an order has been issued without one, any amendments to such order must be accompanied by a proposed new agreement. And a proposed new agree-

ment itself requires a finding under section 8e before the post-war period may be used as a base.

In the second place, the structure of the Act and the provisions of section 8c(17) compel this conclusion. Section 8c(17) expressly makes applicable to amendments all the other subsections of section 8c and the provisions of sections 8d and 8e which together establish a complete system for the formulation, issuance, administration and termination of orders. It clearly contemplates that in all respects amendments shall be treated precisely as orders are treated. By its express reference to section 8e it leaves no doubt that as in the case of orders, so in the case of amendments, a finding under that section must be made if post-war rather than pre-war parity is to be the goal.

Finally, our interpretation of the Act derives support from section 8c(18) which specifically directs the Secretary, prior to prescribing "any term in any marketing agreement or order or amendment thereto", if that term fixes milk prices, to compute a parity price "in accordance with section 2 and section 8e." That provision was enacted two years after the law first became effective and shows what Congress believed it had already required by sections 2, 8c(17) and 8e.

To require the Secretary to make a new finding under section Se in connection with the issuance of amendments to an order would advance the declared policy of the Act, namely, to achieve pre-war parity. Promulgation of amendments, like the issuance of a new order superseding an old one, furnishes an appropriate occasion for re-examination of available statistics for the purpose of ascertaining whether use of the pre-war period as the base has become possible in the light of current economic research. Such re-examination would tend to safeguard against the inadvertent use of the post-war period when

figures for the pre-war period were at hand, and would prevent unwitting violation of the express statutory prohibition against raising prices above the pre-war level. Moreover, the burden of making a section 8e finding—the inquiry being limited to data available in the Secretary's own department—is negligible compared with the burden of complying with other procedural requirements which are clearly and admittedly applicable to the issuance of amendments, such as the holding of public hearings and referenda throughout the marketing area.

It is conceded that no separate or express finding was made or proclaimed in connection with the issuance of the amendments to Order No. 4 or the marketing agreement proposed to accompany them. Nor was there an implied reaffirmation of the original section 8e finding in the recitals preceding the amendments. In those recitals the Secretary ratified and affirmed only "the findings made upon the evidence introduced at the hearing on said order." The section Se finding was clearly not one of these, since it neither had to be, nor purported to be, made upon the basis of evidence introduced at the hearing. In any event, it is well settled by decisions of this Court that where a finding is required by statute it must clearly and expressly appear and cannot be supplied by implication or by a strained construction of the words. Manifestly, the recitals preceding the amendments to Order No. 4 fall far short of meeting that test.

Where Congress has, as it did here, conditioned administrative power, upon an administrative finding, the finding is the statutory basis of the power. It is evidence of the existence of the "quasi-jurisdictional" facts essential to the validity of the administrative action. Upon both principle and authority the action is void when the finding is lacking. The statutory finding was not made and proclaimed in connection with the issuance of the

amendments to Order No. 4. They were, therefore, nullities.

IV.

The Market Administrator did not comply with the provisions of the amended Order in computing blended prices and equalization payments. He included in those computations milk delivered to handlers by producers who possessed no certificate, required under the provisions of Massachusetts statutes as a prerequisite to selling milk, showing that the farms on which they had produced that milk complied with the minimum sanitary requirements laid down by the Commonwealth. amended Order, however, specifically provides that only milk produced and sold in accordance with the applicable health requirements in the Boston market shall be taken into account in determining the blended price or the obligation of handlers to pay equalization charges or minimum, prices. Article VII of the Order requires the Administrator to compute blended prices on the basis of milk purchased by handlers from "producers". Article I of the Order defines "producer" as "any person who. in conformity with the health regulations which are applicable to milk which is sold for consumption as fluid wilk in the Marketing Area, produces milk and distributes, or delivers to a handler, milk of his own production". The test as to whether milk is to be included, therefore, is whether it has been produced in such a way that, under the health regulations in the market, it can be sold therein.

The health regulations applicable to milk sold in the area to which the Order applies are two-fold. First, there are the general requirements laid down by the statutes applying to all milk sold anywhere in Massachusetts. Second, there are the requirements imposed by the several municipalities governing the sale of milk

within their limits. Milk sold anywhere in Massachusetts must meet certain general standards as to butterfat and solid content and must be free from impurites and unadulterated. In addition, it must be produced on a farm which has been certified as complying with certain minimum sanitary requirements. By the express provisions of Section 16A of Chapter 94 of the Massachusetts General Laws "no person shall sell . . . milk produced on a dairy farm unless as to such farm a certificate of registration has been issued . . . and is in full force and effect." This provision, designed to insure that the source from which the milk comes has been inspected and found clean and sanitary, is a fundamental health requirement applicable to all milk sold anywhere in Massachusetts. The Administrator, however; did not take into account this provision of the statutes. Although milk produced on farms which had no such certificate was reported to him, he did not exclude it from his computations. He looked only to see if the handler to whom it was delivered by the producer was licensed by the municipal authorities of any city or town in the marketing area to sell milk in that municipality and if the handler's plant from which that milk was distributed had been approved by the municipal licensing authorities. Thus he assumed that compliance with the local municipal requirements was enough. But the fact that the handler possesses an occupational license to sell milk in a single city in the area plainly does not warrant him or his producers in disregarding the general requirement against the sale of milk produced on an uncertificated farm.

The Administrator was not warranted in applying his own test of what met the health requirements rather than the test laid down by the Order because of the difficulty, or even impossibility, of determining from information available to him what producers possessed certificates.

If actual experience in operating under the Order as written showed the unworkability of the scheme, the only proper course was for the Secretary to change his definition of "producer" by amending the Order in accordance with the procedure laid down by the statutes. In orders in other marketing areas, including one in Massachusetts, issued since the present litigation, "producer" has been differently defined, doubtless to avoid such questions as are raised in this case. But, since no such change was made in this Order, the Administrator was bound to follow it as written.

The Master has found that the Administrator's errors in computation affected the amount of the blended price in every delivery period from August 1 through December 31, 1937. Producers, therefore, are entitled to have the Administrator recompute the blended price for each such period in accordance with a proper construction of the Order. And, since the amount of the blended price is the index by which equalization payments due from handlers are determined, the amounts demanded by the Administrator from the petitioning handlers, which the Court has ordered them to pay, were not due him. 'A recomputation of the equalization payments for each such period is required so that the extent of their liability may be correctly determined.

ARGUMENT

I.

THE ACT IS INVALID BECAUSE IT DELEGATES LEGISLATIVE POWER TO AN ADMINISTRATIVE OFFICER.

The distinction between an unconstitutional and a permissible delegation of legislative power is the difference between "the delegation of power to make the law

which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law." Field v. Clark. 143 U. S. 649, 693. The genesis of legislation is the resolution of conflicting interests and the selection of some for advancement in the manner thought to be most consistent with others often antagonistic but only slightly less desired. At the least, therefore, the lawmaker will first choose a definite aim. Second, he will decide what is to be regulated and when and where it shall be regulated. Third, he will establish a general program defining the mode of regulation. Under the Agricultural Marketing Agreement Act the Secretary makes those decisions. He has been given a vague goal to achieve, and no more. The choice of an occasion to commence and carry on the effort is his. The Act simply enjoins him to make the decision after considering the same antagonistic interests which confront the lawmaker. Therefore, the power to decide whether there shall be regulation is unconstitutionally delegated. Panama Refining Co. v. Ryan, 293 U. S. 388. The Act also transfers to him power to choose a program of regulation. The ultimate goal set for him does not control the selection. Therefore, the power to choose the manner of regulation is unconstitutionally delegated. A. L. Schechter Poultry Corp. v. United States, 295 U. S. 495. We consider these points in order. The combined power is the more excessive.

A. Power to Determine When, Where and What Commodities Shall Be Regulated Is Unlawfully Delegated.

The Agricultural Marketing Agreement Act of 1937 does not itself create obligations binding handlers of any commodity. The Secretary of Agriculture may select

milk. Section 8c(2) lists six important agricultural commodities and their products, including milk, as appropriate subjects of regulation. How the Secretary shall choose one or all is not specified. Section 8c(2) also permits regulation of a regional classification of a commodity. It does not describe either the size of the area to be covered by an order or the particular areas to be affected thereby. The absence of geographical delimitations is particularly striking in the case of milk. Section 8c(11) (B), which sets forth the only geographical limitations contained in the Act, is not applicable thereto. Under Section 8c the Secretary is also granted power to determine when there shall be regulation, to choose a time for its initiation, suspension or termination.

The substantive provisions of the Act purport to describe what commodities shall be regulated, and when and where they shall be regulated, only by reference to the declaration of policy. The administrative machinery is to be set in motion whenever the Secretary "has reason to believe that the issuance of an order will tend to effectuate the declared policy . . . with respect to any [listed] commodity" (Section 8c(3)). The order shall issue if the Secretary finds that it and all its terms "will tend to effectuate the declared policy" (Section 8c(4)). to be terminated or suspended upon a finding that it does not tend to do so (Section 8c(16)). These provisions of the Act, therefore, contain no mandate to invoke regulation of a certain commodity in a particular area upon the occurrence of a specified event. It is necessary to turn to the declared policy to discover whether at any time there shall be regulation.

The policy of the Act is declared by Section 2. It states two purposes. The first is to maintain orderly marketing conditions that will establish such prices to farmers as will give agricultural products a purchasing power equivalent to their purchasing power in the period 1909-1914, and as will reflect any changes in interest rates and tax payments. The second is to protect the interest of the consumer by raising the price level of farm products only as rapidly as the Secretary deems to be "in the public interest and feasible in view of current consumptive demand"."

Assume that the first purpose was the only direction given to the Secretary. Assume that the Secretary was to issue an order whenever the purchasing power of milk dropped below parity. Even then there would not be an intelligible standard to govern him in determining whether he should regulate the handling of certain milk.

In theory, the disparity in the purchasing power of a commodity in two different periods is a fact susceptible of precise determination. The purchasing power of an hundredweight of milk, for example, is the amount of goods it will purchase of the kind which milk producers buy. Hence, the abstract parity concept appears to have mathematical precision. It may properly be expressed in the following formula:

Cost to milk producers affected by the Order of articles bought by them in base period

Milk Prices in Base Period

Cost to milk producers affected by the Order of articles being bought by them in instant period

Parity Price

Section 8c(18) is, in effect, a subsidiary declaration of policy. It is of no consequence here. It applies only when an order is to contain terms fixing the prices of milk. It governs only the price to be fixed. Doubtless, expediency requires that the Secretary determine what is the reasonable price, if he is to fix a minimum. The questions we raise, however, have to do not with the latitude permitted in actually fixing a price but with the latitude permitted in choosing whether to regulate the handling of milk at all and what form the regulation shall take. To those questions section 8c(18) has no relevance. We disregard it.

This formula is the first part of the declared policy.³ Upon the assumption mentioned, the Secretary in theory has only to apply the formula to milk producers and milk prices in the Boston, New York, St. Louis or other milk sheds to determine whether at the moment there shall be regulation in a market.

The vice in this standard is that it is an abstraction only. The Secretary cannot, and in practice has not, ascertained either the cost to New England milk producers of an average bill of goods bought in the base period or the cost to New England milk producers of an average bill of goods bought in the instant period. Therefore, the purchasing power of milk in the two periods could not be compared even if the milk prices were known and comparable. The true basis of a conclusion that the local prices are less than parity may be cloaked in mathematical computations. In the final analysis it is only an opinion that the producers should receive higher prices.

The calculations leading to the issuance of Order No. 4 and its amendments fairly illustrate that conclusion. The Secretary used a series of index numbers to represent the cost of articles bought (R. Vol. II, p. 207, par.

Strictly to cover the entire purpose of section 2(1) it would be necessary to construct similar formulae for interest and tax payments. The calculation of the unknown in each would be made and the results weighted according to the relative amount of expenditures for each of the three purposes both in the base and in the instant period.

[&]quot;Parity price, therefore, must not be taken too seriously as the goal or limit of the price-raising activities of the AAA. It must be considered a rough indicator of the price increase to be sought." Black, The Dairy Industry and the AAA, Brookings Institution (1935), p. 7. "Both its concreteness and its look of reasonableness made it serviceable as a slogan in popular discussion and congressional debate and legally acceptable as an administrative formula under which Congress could delegate its legislative authority to the Secretary of Agriculture." Nourse et al., Three Years of the AAA, Brookings Institution (1937) p. 452.

215). That would have been proper had the index fairly represented the change between the two periods (R. Vol. II, p. 205, par. 213). The one used was inappropriate. It showed the cost fluctuations of a fixed bill of goods. Each of the items and groups of items from which the composite index was drawn was given one weight for all years (R. Vol. II, p. 207, par. 215; Exh. 17, R. Vol. III, pp. 164, 200-201). The relative amount spent for each group of articles manifestly varies from year to year and over a period of years. Careful application of the parity formula would require correction of the index numbers.7 Nor does the series make any allowance for changes in the quelity or utility of articles bought (R. Vol. III, p. 167). Both change greatly over a period of years. For example, should cooling apparatus be sellingfor the same price in the base and instant periods and the price of milk be constant, the increase in the durability and efficiency of the apparatus would be an increase in the purchasing power of milk. A reasonable use of the index numbers to supply the factors in the parity formula would involve adjusting them to reflect those changes.

There is another, perhaps greater, difficulty in the practical use of the parity formula as a definitive standard. To determine in accordance with it whether at any moment there shall be a regulation of a regional classi-

The pamphlet of the Department of Agriculture states in explaining the index numbers, "Users of these index numbers of prices paid by farmers are cautioned against their misinterpretation and misuse. These price index numbers do not measure changes in farm expenditures, but merely show changes in the value of a fixed bill of goods. . . ." (Exh. 17, R. Vol. III, pp. 164, 166).

[&]quot;Any careful or critical appraisal of changes in prices, however, must take into account the fact that the commodities represented may not be, and are likely not to be, exactly the same between two distant periods of time" (Exh. 17, R. Vol. III, p. 167).

fication of a commodity, the Secretary must evaluate the changes in the cost of articles bought by producers of the particular commodity in a particular region.

The Secretary used a nation-wide series in issuing and amending Order No. 4, apparently because it was the best available (R. Vol. II, p. 207, par. 215). The percentage of change in the cost of articles bought by the average farmer is a poor guide to the percentage of change in the cost of articles bought by the New England milk producer. Facts of common knowledge force that conclusion. Prices of articles bought vary throughout the sections, and vary relatively over a period with the geographical movement of industries. The character of articles bought is widely divergent as among farmers engaged in different activities. A large increase in the cost of one group of articles entering into the final index number and weighted for the average farmer will cause the final index to rise. But if that group of articles is not bought by the producers of the commodity under study, an appropriate index number for their purchases would not rise. For example, the milk producer buys comparatively little seed or farm machinery. His principal production costs are feed and labor. The large southern and western farmer, on the other hand, buys a great deal of seed and machinery. The national average is somewhere between, and representative of neither. The national index is strikingly inapplicable as a means of determining the relative purchasing power of New England milk producers. In 1935 when Order No. 4 was issued, the prices of seed and machinery were up 50%

There are no geographically segregated indices of prices paid by farmers. The only available series is national in its scope. Prices Paid By Farmers For Goods And Services And Received By Them For Farm Products, 1790-1871; Wages Of Farm Labor, 1780-1937, T. M. Adams, University of Vermont and State Agricultural College (February 1939).

from the pre-war base (R. Vol. II, pp. 162-163). Those are the two articles least bought by New England producers. Feed, on the other hand, had risen only 11% (R. Vol. II, pp. 162-163). It is one of the milk producers' chief purchases.

The conclusions the Secretary drew after using this index to supply two decisive factors in the parity formula, may have been reasonable. The purchasing power of milk produced for the Boston market may have been below parity when Order No. 4 was issued. No one could prove that it was not. The fact is not capable of ascertalment because the past and present purchasing power of that milk are unknown and unknowable. They exist only in the abstract. Thus, the Secretary is inevitably thrown back upon the seemingly nearest equivalentsthe comparative prosperity of the particular group of producers in the base and instant periods. Whether he'adjusts the nation-wide index, whether he decides it needs no adjustment, or whether he ignores it, the single basis of his final conclusion is his considered but nevertheless subjective and general opinion of the comparative welfare of the producer. And since the pre-war period is in fact but a symbol in the folklore of agrarian reform, the first part of the declared policy is simply an admonition to improve the status of the producer. In practice, the illusory precision of Section 2(1) has, and can have, no other meaning.10

¹⁰It was suggested to the Court in Butler v. United States, No. 401, October Term 1935, that section 2(1) impliedly directed the Secretary to use the National Index of Articles Bought. (See Brief for Petitioner, pp. 49-53.) The language of section 2(1), however, certainly does not warrant a construction binding the Secretary to use without adjustments statistics having the smallest tendency show the goal which section 2(1) directs him to achieve. Nor can it be argued that Congress ratified the procedure because it was used under previous acts. Congress has ratified past orders but it cannot be argued that in doing so

The occasion for the issuance of an order, however, is not even the formation of an opinion that farm prices are less than parity. The Secretary is ordered to act, not on the basis of existing conditions, but upon prophecy. An order is to issue when the Secretary finds it "will tend to effectuate" the declared policy, i.e., to achieve a parity of purchasing power. Such a "finding" does not call for the ascertainment of facts, but for an expression of hope as an economist. Amended Order No. 4 illustrates how much is left by the Secretary to chance, and by the Act to the Secretary's judgment.

In making the finding he had to foretell whether the cost of articles bought would rise or fall. It varies from year to year and from month to month (R. Vol. II, p. 211, par. 226). The national index in fact fell seven points in the five months following the issuance of the amended Order (R. Vol. II, p. 207, par. 215; Exh. 16, R. Vol. III, pp. 162-163).

The Secretary must also prophesy what effect his order will have on milk prices. Amended Order No. 4 fixed the Class I price, set out a formula for computing the Class II price in which the governing factor was the unregulated price of cream, and left the amount of surplus unregulated (R. Vol. II, p. 210, par. 222, 223). These three elements determine the return per hundredweight of milk produced (R. Vol. II, p. 209, par. 220). Since cream prices vary sharply, the Class II price fluctuates. The

Congress ratified for the future the method by which they were promulgated. This is true because no one knows nor did Congress know what procedure the Secretary followed in determining whether and how far to vary from the national index in calculating the price for each commodity. In short, Congress in the absence of an express declaration to the contrary ratifies action taken and not the method by which the Secretary decided to take it.

¹¹During the administration of Amended Order No. 4 the Class II price varied from \$1.905 per cwt. in December 1937 to \$1.049 in June 1938 (R. Vol. III, pp. 118, 146).

percentage of surplus actually varies from year to year, sometimes substantially (R. Vol. II, p. 210, par. 225). Indeed, a class price increase may defeat its own end by causing an offsetting rise in the surplus, (R. Vol. II, p. 210, par. 224). The Secretary, therefore, can only guess what the composite price will be.

The finding required by Section 8c(4) is the only guide expressed by the Act. Manifestly it is not a real limitation upon the exercise of the delegated power. Not only is the parity concept itself illusory. Obedience to the command to issue orders tending to achieve "parity" involves weighing too many variables to be done with precision. The formation of a judgment that a proper occasion for regulation exists, therefore, is only a decision that regulation would then be desirable. Power to make such decisions cannot be delegated. Panama Refining Co. v. Ryan, 293 U. S. 388.

The assumption upon which the previous discussion is based—that orders shall issue whenever the Secretary finds that they will tend to achieve parity—however, is false. Section 2(2) introduces into the declaration of policy a second element which increases the Secre-

¹²The increase mentioned in paragraph 224 of the report occurred during a period of regulation by federal licenses and orders found to tend to achieve parity. R. Vol. II, p. 133, par. 94, p. 36, par. 7.

Apparently the statute was drawn in the hope that J. W. Hampton, Jr. & Co. v. United States, 276 U. S. 394, would be considered a precedent. In that case, however, the President was directed to act upon the basis of an existing fact ascertainable from prices at which foreign and domestic goods were selling in this country. The cost of production formula was not shown to be indefinite in practice. Its application would be the easier because only knowledge of contemporaneous facts was necessary. Furthermore, the tariff is closely allied to foreign relations, and the Executive may properly exercise more power there than in other fields. United States v. Curtiss-Wright Export Corp., 299 U. S. 304, 314-329. Without reference to the other vaguer parts of the declared policy, the case is distinguishable.

tary's freedom of action. Section 2(2) declares the added purpose to protect the interest of the consumer by raising prices for farm commodities "at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand". If the parity concept stood alone the Secretary would be required to issue orders when they directly or indirectly would establish a parity price. Taking the declared policy as a whole, however, he may issue or not issue orders accordingly as, in his mind, the interest of the farmer outweighs or is outweighed by the interest of the consumer. Of their relative weight he is always the sole judge. The declared policy gives no measure of either: It indicates that in the long run only the interest of the farmer may be the greater. Unlike Section 2(1), Section 2(2), moreover, on its face is a vague generalization having any meaning the reader might give it. The measures of the consumers' interest are "feasibility in view of current consumptive demand", and "the public interest".

But feasibility in view of the current consumptive demand means only that any regulatory scheme shall be practicable in the light of circumstances, and perhaps, that the prices resulting from it shall not be so high as to discourage consumption and defeat their own end. Such a statement does not establish an objective test to measure the desirability of regulating the handling of a commodity. At most it is an injunction to act wisely.

Similarly, the test of "the public interest" simply expands the ground in which the Secretary may use his discretion in deciding whether there shall be regulation or not. In some surroundings that phrase supplies a sufficiently definite test. Thus, it has been used frequently in railroad legislation which delegated powers to the Interstate Commerce Commission. See Intermountain Rate Cases, 234 U. S. 476, 486; Avent v. United States,

266 U.S. 127, 130. In those instances, however, other statutory provisions prescribe affirmative duties and positive prohibitions which narrow the field for administrative regulation and direct its course. Regulation of the transportation system has, moreover, an historical evolution which created symbols for definitive standards expressed in past practice and in comprehensive legislation. New York Central Securities Corp. v. United States, 267 U. S. 12, 24, 25. Another instance is the power of the Federal Radio Commission to grant licenses as "the public convenience, interest, or necessity requires". The test is definitive in that sphere, because the statute itself sets forth general criteria for the distribution of facilities, leaving to the Commission their application to the technical matters of frequency and interference. The subject matter of the field left open itself supplied narrow objective tests. Federal Radio Comm. v. Nelson Bros. Bond & Mtg. Co., 289 U. S. 266, 279-285. In the field of agricultural regulation the dictates of the public interest are undefined. It lacks a background of gradual historical development. It is not narrow and technical. The questions it comprehends are not even limited to those arising between the consumer and the producer of milk. They extend to such problems of broader economic dislocation as may arise from increasing the proportion of consumers' expenditures for one product and thus bringing about an inevitable decrease in the proportion of consumers' expenditures for other products. The effect of raising farm prices upon the business of dealers and upon their retail price and wage policies would also have to be considered. In short, the injunction to regulate the handling of a commodity only when it is "in the public interest" gives power to the Secretary to regulate or not as his individual judgment of good policy may require.

The substantive sections delegate to the Secretary power to decide what shall be regulated, and when and where it shall be regulated. The declared policy does not set forth facts the existence of which shall be the occasion for regulation. It states what must be considered: the producers' interests, the consumers' interests and the public interest. Resolution of those interests is the genesis of every agrarian law. He who resolves them into action or inaction makes the law, even if the field for action is limited. Under this Act he would be the Secretary. The Act does not declare what on any occasion the law shall be. It declares who shall make it.

Even if the parity concept in Section 2(1) were definite, that would be true. At most it sets a goal to be reached by the path of regulation. Nothing in the declared policy indicates when the path is to be trod, when the journey is to be broken and when recommenced. Regulation when the Secretary deems it to be consistent with the consumers' interests, in the public interest and feasible, is regulation when the Secretary guided by his-conception of good policy only, decides that it is a proper occasion for action. In short, Section 2 sets up no limitations, no facts to be ascertained, nothing but an individual's unguided judgment as the occasion for regulation. Delegation of the power to make that judgment is an unconstitutional transfer of the legislative power. Panama Refining Co. v. Ryan, 293 U. S. 388.

B. Power to determine the manner of regulation is unlawfully delegated.

The Agricultural Marketing Agreement Act of 1937 does not prescribe even a basic program of regulation to be invoked when the Secretary finds that circumstances warrant regulation. The scheme of sections 8c(5) and 8c(7) is that the Secretary shall choose the manner in

which he will regulate the handling of milk. They list a large number of terms, all or part of which may, and one of which must, be included in a milk order. The Secretary may select and arrange them into radically different regulations.

Section 8c(4) is the only attempt to guide the Secretary's choice of a program. Under it an order shall issue if the order and all its terms will tend to effectuate the policy of the Act. We have already shown that the declared policy is not a sufficiently intelligible standard to confine the Secretary's action to matters of administration, that it is simply an admonition to form a legislative judgment and to act or not act accordingly. By the same token it is not an adequate criterion for the choice of a program.

Assume, however, that a parity of purchasing power is an intelligible end. Assume further that protection of the consumers' interests requires an ascertainable gradual rate of increase. The ultimate question is whether Congress has declared how the Secretary shall exercise the power delegated. If the only standard is broad or vague then the exercise of the power is unconfined and the delegation excessive. Panama Refining Co. v. Ryan, 293 U.S. 388; A. L. Schechter Poultry Corp. v. United States, 295 U.S. 495. In such cases the vital defect is not the indefiniteness of the standard but its inadequacy as a guide because it is indefinite. An irrelevant or indecisive standard, however precise, is equally inadequate because it is equally unconfining. That is the second great vice in Section 2. At best, it sets forth the goal and the gradual rate for its achievement without guiding the Secretary in choosing among the terms listed in Sections 8c(5) and 8c(7) of the Act.

Even a rough grouping of them will show that he has a choice between three basic programs for raising the prices paid to producers. First, he may assist the producer to acquire higher prices by bargaining with handlers. Second, he may indirectly stabilize the resale price structure. It immediately affects farm prices. Third, he may directly fix in one of several ways prices payable by does for milk delivered. The Act permits variations in each scheme scarcely less fundamental than the scheme itself. It also permits but does not require any conceivable combination. In addition, the Act sets forth without preference alternative schemes of distributing among producers the total dollar value of milk. Each of the three programs is adaptable to raising prices. The same is true of their combinations. The choice, moreover, is not between subsidiary regulations. It is among fundamental controls.

The first line of endeavor might be to assist the producer in acquiring higher prices by strengthening his bargaining power and by eliminating dishonest dealer practices. The Secretary may accomplish this by four subsidiary measures. First he would supply producers with appropriate market information by setting up an agency to gather and disseminate it (sections 8c(5)(E). 8c(7)(C)). Producers do suffer in bargaining from lack. of such information. Federal Trade Comm. Summary Report in response to H. Cong. Res. 32, 73d Cong., 2d. · Sess., at p. 34.14 Secondly, the actual amount received by producers could in fact be significantly increased on the average by policing the relations between producers and dealers with a view to prevent dishonest practices, including false weighing and testing, and to insure actual payment of the negotiated price (sections 8c(5)(E), 8c(7)(A)). F.T.C. Rep., pp. 3-6. Thirdly the same line of endeavor might find expression in a modified price regulation which would require each dealer to pay the same

¹⁴Hereinafter cited as F.T.C. Rep.

basic price to all his producers (section &c(5)(B)(i)). That would prevent local overbidding to entice producers. away from other dealers. It might also tend to force large dealers meeting high local prices to raise their prices uniformly. Such statutes have been found useful. Vt. Pub. Laws, 66 7722-23. Fourthly, the Secretary has power to prohibit unfair methods of competition and unfair trade practices (Section 8c(7) (A)). There is intelligent opinion that the tendency towards the concentration of distributing facilities may result in useful economies which would benefit the producers but that it also may put the producers at a disadvantage by concentrating the purchasing power in the hands of a few dealers. F.T.C. Rep., p. 38; N. Y. Legis Doc. (1933) No. 114, p. 20. The Secretary under Section 8c(7)(A) could encourage the economies and at the same time eliminate the abuses. A program comprising all four elements would certainly "tend to effectuate" the declared policy.

The Secretary may, however, ignore that line of attack and concentrate on the resale price structure. Instead of policing the relations between dealer and producer he might regulate the relations between the dealer and his customers. Competition in fluid milk sales is exceptionally severe and has frequently produced sharp breaks in both resale and producer prices (R. Vol. II, pp. 98-100, par. 41-44). The Secretary has no power to fix resale prices but he does have power to outlaw most assaults on the price structure by prohibiting unfair competition and unfair trade practices (section 8c(7)(A)). Secret rebates, local price cutting to crush competition, special discounts, and discriminations are largely responsible for the instability of the resale price structure. F.T.C. Rep., p. 39; N. Y. Legis Doc. (1933) No. 114, p. 15; J. D. Black, The Dairy Industry and the A. A. A., The Brookings Institution (1935), p. 233. Such unfair practices on

the part of a few dealers, as in many industries, force the others openly to lower their resale prices in order to retain their customers. The prohibition of those practices would mitigate if not eliminate many resale price wars. The producers would surely profit. R. Vol. II, pp. 98-100, par. 41-44. Nebbia v. New York, 291 U. S. 502. Not only that, there is reason to believe that substantial savings from the elimination of waste and destruction would be passed back to producers. N. Y. Legis Doc. (1933), No. 114, p. 263.

The third possible program is the fixing of prices to producers. Within it choices are possible. For example, the Secretary has power to fix a flat minimum price which all handlers must pay (section 8c(5) (B) (ii)). Probably that plan would be useful only to eliminate the lowest prices. A higher minimum flat price would force out of business dealers with high percentages of surplus. But it might be adopted. Such a plan has been in effect in the Boston milkshed (R. Vol. II, p. 123, 124, par. 78); and it would scarcely be arbitrary or capricious to think that in the long run it might aid the producers. The more likely scheme of price regulation, however, would be the fixing of class prices (section 8c(5)(A)). It in itself involves a choice, for the Secretary may or may not apportion the proceeds among producers on the basis of individual ratings (section 8c(5)(B)(d)).16 The base rating plan not only affects the individual producer's return per unit by limiting the milk included in a dealer or market-wide pool

an order simply regulating trade practices. One term from section 8c(5) must be included. If, however, the Secretary honestly believed that to be the best program, he could legally and conscientiously follow the Act by inserting an innocuous term requiring security for producer payments.

¹⁶Under original Order No. 4 the base rating plan was enforced. R. Vol. II, p. 25. It was deleted by the amendments. R. Vol. II, p. 48.

but it also is calculated to even out production over the year to minimize heavy seasonal surplus. The Secretary's choice in this matter has vital importance because the surplus is the greatest problem in the industry. See Nebbia v. New York, 291 U. S. 502.

Between these three fundamental programs and the four possible combinations thereof, the Secretary has practically unlimited power of choice. The broad provisions of sections 8c(5) and 8c(7) are sufficiently general to be adapted to local conditions in any market.17 Each is swited to achieving the gradual rise in the purchasing power of milk which is said to be required by the policy of the Act.18 The inadequacy of the only standard established by the Act is accentuated in the opportunity for choice of one of the possible combinations of the three programs because price fixing alone could always accomplish the desired gradual increase. Necessarily, therefore, the Secretary's selection will depend upon his views of the relative desirability of the alternatives, not from the viewpoint of their effectiveness in raising prices but from the viewpoint of their desirability in other respects.

The organization and structure as well as the problems of all the milksheds and markets are basically the same. See F.T.C. Rep. passim; J. D. Black, The Dairy Industry and the A. A. A., The Brookings Institution (1935), ch. II. Comparison of the pertinent parts of the Master's Report (R. Vol. II, pp. 90-137), and of the Pitcher Committee report (N. Y. Legis Doc. (1933) No. 114; see Nebbia v. New York, 291 U. S. 502), illustrates the essential similarity in greater detail.

is The fact that in most milk orders the Secretary has fixed prices should not obscure the fact that the other fundamental programs are equally open and capable of development. Indeed, at least one line of economic thought holds the true function of marketing agreements and orders is to regulate trade practices and to encourage cooperative producer solution of the problems. Price fixing by the Secretary under this Act has been thought to be a sacrifice of the gradual sound increase sought by the declared policy to the immediate demands of influential groups. See Nourse, et al., Three Years of the A. A. A., The Brookings Institution (1937), p. 498.

Plainly, the choice of a fundamental program and the issuance of orders according to that choice, is no mere rubbling of chinks in the legislative structure. See Wayman v. Southard, 10 Wheat. 1, 43. Congress may legislate so far as practicable, and, having selected a legislative program, undoubtedly may delegate the duty of regulating the minutiae according to the program. Buttfield v. Stranahan, 192 U.S. 470. Examples of such legislation are the statutes delegating power to fix grades and standards for classifying commodities. Buttfield v. Stranghan, supra; Red "C" Oil Co. v. North Carolina, 222 U. S. 380, 394; Currin v. Wallace, No. 275, October Term, 1938. Cf. St. Louis, I. M. & S. Ry. v. Taylor, 210 U. S. 281, 287. In such cases, the very narrow nature of the subject matter limits the manner of the exercise of the delegated power. The questions left to the administrator's decision are questions not of governmental policy, but of mechanical application. Cf. Federal Radio Comm. v. Nelson Bros., 289 U.S. 266, 279.

Nor is the delegation here sustained by analogy to statutes directing the executive branch to invoke specific regulations upon its ascertainment of certain facts. Field v. Clark, 143 U. S. 649; J. W. Hampton, Jr. & Co. v. United States, 276 U.S. 394; Mulford v. Smith, No. 505, October Term 1938, decided April 17, 1939. The Marketing Agreement Act leaves the Secretary to choose a form of regulation; it specifies no facts on which the choice shall depend. The best examples of the principle expounded in Field v. Clark, supra, may be found in cases sustaining the power of Congress to establish a general rule and to delegate the duty to adapt and apply it by administrative regulations to the facts revealed in particular instances. States v. Grimaud, 220 U. S. 506, 517, Mahler v. Eby, 264 U. S. 32; United States v. Chemical Foundation, 272 U. S. 1, 12. For example, where Congress has declared that

navigable streams shall not be obstructed, there remains only the power to consider the traffic on the stream and the manner in which a particular proposed structure would affect it. Union Bridge Company v. United States, 204 U. S. 364, 388. Monongahela Bridge Co. v. United States, 216 U. S. 177, 193. Under the present Act, however, the Secretary does not make local regulations only. He does that, but first he chooses a basic system of control from a number of plans applicable to every market.

One choice heretofore unmentioned illustrates the contrast between the administrative decisions made under those statutes and the legislative decisions which the Secretary makes under this Act without guidance from the declared policy. If the Secretary determines that he will raise the purchasing power of milk by fixing use class prices then it is necessary for him to establish either dealer pools or a marketwide pool. Section 8c(5)(B) empowers him to choose either. The declaration of policy does not guide the choice. The policy is directed only to the purchasing power of commodities. The alternative equalization devices have to do only with the distribution of that purchasing power. This is easily shown.

Under both dealer and marketwide equalization the price to be paid out by the dealers for milk put to each use is fixed without regard to which one of the necessary pooling devices is to accompany it (R. Vol. II, p. 122, par. 74). The class prices therefore determine the dollar value of milk, which is as far as the Secretary can go towards regulating its purchasing power. Under both plans of equalization, the sales of each dealer in each use classification are multiplied by the price fixed for that class. Under each plan the product is his total financial contribution and the sum of the products for each dealer is the measure of the purchasing power of the commodity. Where the money goes is a different question. If dealer

pools are operated each dealer pays to his producers a unit price calculated by dividing his total purchases from them into his total financial obligation. Since the percentage of surplus among dealers varies, the composite price to groups of producers will vary. Under marketwide equalization, however, the total purchasing power of the milk is distributed evenly among all producers. The price per unit received by each producer is calculated by dividing the total purchasing power of all the milk in the market by the total number of units sold so that each producer will receive a uniform sum.

Consequently, the choice of dealer pools or marketwide equalization is not even between means of increasing the dollar value or purchasing power of milk. Under each plan the average value of an hundredweight of milk in the market is the same. Both plans are only means of distributing the dollar value which measures the purchasing power of the milk.¹⁰ In the absence of fixed class prices doubtless the choice between them may be vital to the industry or to orderly marketing conditions. But the declared policy says nothing of those considerations ex-

[&]quot;Both House and Senate Committees described the provisions in that way and recognized that they did not affect the purchasing power of the commodity: "Alternative methods of distributing the total dollar value of all milk sold in the market among producers supplying the market are provided." H. Rep. No. 1241, 74th Cong. 1st Sess., p. 10; Sen. Rep. No. 1011, 74th Cong. 1st Sess., p. 10. The Secretary in issuing Order No. 4 made the same distinction, finding (R. Vol. II, p. 13):

[&]quot;3. That . . . the prices established in this order will . . tend to give milk a purchasing power . . .

^{&#}x27;4. That the determination of uniform prices to producers and the payment of such prices through a marketwide equalization pool . . . is a fair and reasonable method of distributing to producers the proceeds of sales to handlers. . . ."

He made precisely similar findings when he issued the amendments to Order No. 4 (R. Vol. II, p. 48). See also Black, op. cit supra, p. 292 ff.

cept as they affect prices. And, the choice cannot affect the class prices to farmers where by an order the prices are fixed. The choice of marketwide equalization might add incentive to production by marginal farmers and ensure an adequate supply, but the declared policy is concerned only with the consumers' interest that prices be not raised too rapidly. These subsidiary questions and others like them make up the broad issue, whether it is politic to equalize the purchasing power of producers in order to raise the purchasing power of some at the expense of others. The declared policy speaks only of the purchasing power of commodities. There is a sharp difference between the two (R. Vol. III, p. 166): Indeed, a certain indication of the limitations of the declared policy in this respect is the fact that it seeks only to duplicate conditions in a period when there were class prices and dealer pools with inevitable differences in the sums received by producers. Therefore, the Secretary's choice must be based upon his unguided judgment upon the policy of equalization among all producers.

There can be no doubt that the power to impose or not impose marketwide equalization is a legislative power. The very real question of its constitutional validity shows how deep it cuts. (See Infra pp. 64-83.) If exactions are to be levied on handlers and the prospect of receiving in the future the profits received in the past is to be taken from producers, both for the benefit of their competitors, then Congress should do it. That degree of control is certainly not traditionally an administrative power to be exercised as it is here exercised, according to the administrator's individual and unlimited judgment. The two forms of control are inconsistent. One or the other is a necessary adjunct to fixing use class prices. But the absolute power to choose one or the other is certainly as broad as the unlimited power to invoke or not invoke a

defined regulation. Panama Refining Co. v. Ryan, 293 U. S. 388.**

The decision the Secretary must make upon that question, however, is but one among the similar decisions he makes in selecting one of the seven programs above described, all of which are equally available and equally adaptable to local conditions.21 The questions to be resolved by those decisions also raise fundamental issues of industrial control and social policy: Whether direct price-fixing is desirable or the resulting rigidity outweighs the difficulties of indirectly aiding producers to secure price increases. Whether the producer prices should be raised by checking monopolistic tendencies or. whether the dairying industry would profit by the stability of large units whose policies were regulated. Whether it is more politic to increase prices by eliminating practices which unfairly reduce resale prices or to concentrate directly on farm prices. There is marked contrast between the power to decide those questionswhich is legislative—and the power exercised in executing a program—which is administrative. Since the declared policy gives no clue to their proper resolution, the Secretary is left to exercise legislative power.

^{**}For two reasons it cannot be contended that the requirement in section 8c(5)(B)(i) of assent by three-fourths of the producers to dealer pools prevents there being an unconstitutional delegation of power. First, if the Secretary does not exercise his own judgment, then the producers, guided only by their interest, make the law. This would be a denial of due process. Eubank v. Richmond, 226 U. S. 137, 143; Seattle Trust Co. v. Roberge, 278 U. S. 116, 121-122; see Highland Farms v. Agnew, 300 U. S. 608, 614. Second, the essential question is not how regulation is made but whether the Congress has exercised its constitutional function. If it has not, the delegation is unconstitutional without regard to who else exercises the power. A. L. Schechter Poultry Corp. v. United States, 295 U. S. 495, 536-538.

²¹See footnote 17, supra p. 53.

C. THE PLENARY POWER TO REGULATE THE DAIRYING INDUSTRY IS UNLAWFULLY DELEGATED.

Analysis of the power delegated to the Secretary into his power to choose a time for regulation and his power to choose the mode of regulation is helpful to determine the constitutionality of the Act. Authority to exercise uncontrolled power in either respect, would be excessive. Panama Refining Co. v. Ryan, 293 U. S. 388; A. L. Schechter Poultry Corp. v. United States, 295 U. S. 495. The altimate question, however, is whether, taking his authority to impose legal obligations as a whole, his function under the Act is that of an administrator or of a legislator.

The dairying industry has a sufficient public importance to warrant regulation as a public utility, both because large sections of the country depend upon it for their livelihood (R. Vol. II, pp. 90-95; Nebbia v. New York, 291 J. S. 502), and because the public requires milk as an important article in its diet (R. Vol. II, p. 88). The states have power to regulate the industry for the benefit of both interests in the absence of federal regulation. Milk Control Board of Pennsylvania v. Eisenberg Farm Products, No. 426, October Term, 1938; Nebbia v. New York, supra. It may be assumed that it is also both a proper and a desirable field for federal regulation.

By the Agricultural Marketing Agreement Act of 1937 Congress turned the industry over to the Secretary with an injunction to consider immediately the interest of the farmers in an increase in the purchasing power of their produce, the interest of the consumers in low prices, and the feasibility and effect on "the public interest" of his program. The declared policy also indicates a Congressional belief that over a period of years the purchasing power of farm products should be increased. Even if the parity concept could be applied in practice, that

would be the substantial intendment of the declared policy.22

In addition to stating what to emphasize in the long run in regulating the industry, the Congress undeniably limited somewhat the manner in which it could lawfully be regulated. Shipment of milk from one area into another cannot be prohibited by the Secretary (section 8c(5)(G)). He has been given no power directly to set a maximum or minimum resale price. Nor may he prohibit production, although he may indirectly regulate it by base ratings which would cause farmers to receive less for milk marketed in excess of their bases (see R. Vol. II, pp. 9-30). With these exceptions, however, the Secretary has been given power to regulate the industry in each area in any way or every way which he alone judges desirable and likely to raise prices to producers. Or, if he believes prices will tend to rise with the price level of other commodities, he need not equality at all.

Under the present Act, therefore, the Secretary has absolute control over substantially all of an industry and only a long run general purpose to achieve. The scope of his power exceeds the power exercised by the President over the transportation of oil produced in excess of state allotments. See Panama Refining Co. v. Ryan, 293 U.S. 388. There, the purpose was to improve conditions in an industry. The means was not a matter of choice. Here, the purpose is the same except that one of the three inter sts-the farmer, the consumer, the public-must eventually be favored. And the means is left open for the Secretary's choice. The present case more closely resembles A. L. Schechter Poultry Corp. v. United States, 295 U. S. 495. There, it is true, each of many industries was to be regulated for the purpose of improving economic conditions. The means to that end were unde-

²² See footnote 6, supra p. 40.

fined and broader than the means available under this Act. But the principle is the same. This Act, like that one, "does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure". Ibid at p. 541. The only "finding" required in this Act is similar to that one-that the proposed regulation "will tend to effectuate the declared policy of this title". Ibid at p. 538. The declared policies are differently worded; but, if they are applied to their appropriate sets of facts, the only substantial difference is that the policy of this Act states the elements comprising the public interest in farming and gives one element more emphasis than the others. In each case the finding is essentially an expression of opinion that a proposed regulation will tend to promote welfare of an industry.

The doctrine of the separation of powers does not deny to the government "the necessary resources of flexibility and practicability". A. L. Schechter Poultry Corp. v. United States, 295 U.S. 495, 530; cf. Buttfield v. Stranahan, 192 U.S. 470, 496. But here Congress has done more than delegate the duty to regulate details. More adequate and specific legislation was practicable. Congress might have directed the Secretary to regulate milk prices according to a certain plan, to assist the producers in efficiently marketing their milk, and to eliminate unfair methods of competition. It might have told him to do some of them. It could have decided that there should or should not be market-wide equalization. In short, Congress could and should have selected a program. The problems of the industry are uniform. The markets are suited to a single form of regulation.23 For example, market-wide equalization could be enforced everywhere with similar results, although it may be thought more

²³See supra p. 53, footnote 17.

necessary in one area than in another. The need for regulation to effectuate the declared policy, if it exists, exists everywhere. Prices in the Boston area have been representative of prices throughout the country (R. Vol. II, p. 110, par. 48). The need for local adjustments lies not in the program. Different prices would have to be fixed in different markets. Base ratings might be assigned differently. Location, freight and quality differentials should be adjusted to local conditions. But establishment of one of the three programs from which the Secretary may choose or of a combination of all of them would leave ample room for local adaptations.

Legislation in the field of transportation shows how that might have been done in spite of the complex problems. The Interstate Commerce Commission Act and its amendments, the Transportation Act and its amendments, exemplify a comprehensive statutory structure for administrative regulation according to a policy embodied in the legislation. The intelligible standards established by the broad prohibitions and regulations of those statutes coloured the general words used to prescribe administrative action in particular circumstances, and so limited the delegated power. Intermountain Rate Cases, 234 U. S. 476, 486; Avent v. United States, 266 U. S. 127, 130; New York Central Securities Corp. v. United States, 287 U. S. 12, 24, 25.

Recent legislation discloses the practical possibility of constitutional regulation by Congress in the field of agriculture rather than forbidden delegation of law-making powers to the Secretary. The Agricultural Adjustment Act of 1938, in respect to tobacco, establishes one program for regulating commerce and aiding the farmer—the discouragement of over-production. Regulation must be invoked on the occurrence of a specified and existing fact—an excess of available supply over the reserve sup-

ply level. Allotment of quotas must be made, and made on the basis of past marketings. The Secretary, therefore, makes no legislative choices. He exercises only the proper administrative function of finding the facts and applying the dictates of the statute to them. See Mulford v. Smith, No. 505, October Term, 1938, decided April 17, 1939.

Comparison of those statutes with this Act condenins by contrast, rather than upholds it by analogy. There, Congress outlined a comprehensive program to be administered. Here, it delegated power to choose the policy. There, Congress decided that rates and quotas should . be fixed and commanded performance. Here, it gave power at the will of the Secretary to fix prices. In the field of transportation Congress decided that intercarrier payments should be made to equalize carriers' income so as to provide uniform facilities to shippers. With reference to tobacco, Congress concluded that marketings should be reduced proportionately by all growers from their past marketings. In respect to dairying, however, the Sccretary alone will decide whether to enforce inter-handler payments to equalize their payments for milk so that all producers may obtain uniform returns at the cost of some. Those and like questions of policy are the heart of legislation. They were decided in the one fieldby Congress. They could more eas:1- and should have been decided by Congress in the other

The decision of such questions or them is the difference between creati which is making the law, and presc. compliance with statutory obligation tion of the law. The former comprehe of an ultimate objective from a welter tic demands, second, determination c the appropriate occasion for sacrificing conflicting yet desirable ends to

failure to decide legal obligations, ing the mode of which is execu-'s, first, selection often antagonis-

the ultimate objective, and, third, choice of that program for attaining the objective which is most consistent with the law-maker's view of "the public interest". By the Agricultural Marketing Agreement Act of 1937, Congress performed the first of the law-maker's three functions. It fixed the ultimate goal, improvement of farm con-Beyond that point the Act is organic only, ditions. transferring the power to fix policies and then to formulate a definitive program for achieving them. Secretary's duty even is legislative, the duty to consider the chief conflicting interests-those of the farmer in high and the consumer in low prices—and to resolve them into some program according to his view of prac-'ticability, "feasibility", and his synthesis of all antagonistic demands, "the public interest". That duty and the correlative power has been placed in Congress beyond removal by it. Those questions, which are the heart of law-making and whose resolution is the genesis of a statute, must be resolved by the Congress under the present system of constitutional government. Wayman v. Southard, 10 Wheat. 1, 43; Field v. Clark, 143 U. S. 649; Panama Refining Co. v. Ryan, 293 U. S. 388; Currin v. Wallace, No. 275, October Term, 1938,

П.

THE EQUALIZATION PROVISIONS OF THE AMENDED ORDER VIOLATE THE PROVISIONS OF THE FIFTH AMENDMENT TO THE CONSTITUTION.

The Act, as applied in the amended Order, has two distinct aims and effects. First, it establishes prices to be paid to producers for milk; second, it provides a method of equalizing among all producers in the milk shed, through a marketwide pool, the benefit of all fluid

milk sales in the entire market. By Articles II and III of the amended Order, milk is classified in accordance with the handler's use and minimum prices are fixed for each of the two classes. These prices, the Secretary found, are reasonable and will, over a period of time, tend to give milk a purchasing power equivalent to its purchasing power in the base period (R. Vol. II, p. 48). By such increased prices the return to milk producers in the aggregate is raised, and the economic condition of the group as a whole bettered. Then, having raised the general level of prices, the amended Order undertakes to better the condition of individual members of the group by allocating the proceeds of all sales of milk in the market among such producers by what the Secretary has found is "a fair and reasonable method" (R. Vol. II, p. 48). This is achieved through marketwide equalization. The mechanism by which it is carried out we have already discussed in our description of the provisions of the amended Order (supra, p. 17).

In so far as the amended Order simply fixes prices, we do not challenge its constitutionality. We shall assume that the premise on which the Act is based, that the purchasing power of agricultural commodities has been so seriously impaired as to result in disorderly marketing conditions and threaten the flow of commerce in such commodities, is sufficient justification for the fixing by Congress of minimum prices to be paid such producers for sales in interstate commerce. See Carter v. Carter Coal Co., 298 U. S. 238, 319, 326. Cf. Nebbia v. New York, 291 U. S. 502. We shall also assume that the price level of milk in the Boston market has been so low as to warrant the fixing of minimum prices to be paid for milk by handlers in this area. Nor do we contend that the actual minimum prices established by the amended Order are unreasonably high or confiscatory.

But the vice in the amended Order, affecting both the petitioning handlers and the producers who sell to them: is its effort not merely to establish minimum prices, but to equalize among all producers in the milkshed the receipts from the valuable market outlets possessed by some. The goal sought is to pro-rate the fluid milk market among all milk producers. We contend that this attempted redistribution of purchasing power transcends the limitations imposed upon Congress by the Fifth Amendment. It cannot be sustained as being simply a reasonable method of protecting interstate commerce in milk by increasing the purchasing power of milk producers or preventing disorderly marketing conditions. Its aim and effect are to take the valuable markets of one group of handlers and producers for the sole benefit of their competitors.

A. THE EFFECT OF THE EQUALIZATION SCHEME UPON THE PRODUCER AND THE HANDLER.

The avowed purpose of the equalization provisions of the amended Order is to give all producers a pro rata share in the proceeds of all sales of fluid milk in the market. But the increased share which some producers thereby realize can be achieved only at the expense of other producers. The demand for fluid milk is relatively constant (R. Vol. II, 94). The market for such milk is thus a limited one. Economically it is impossible to increase the share in that market to one group of producers without thereby decreasing the share which others already hold. Of course, it might be urged that even with a decreased share in the fluid milk market, a producer might receive the same number of dollars which he would have received in the absence of the equalization scheme. The suggestion rests on the assumption that it is possible

to raise prices sufficiently to offset the loss resulting from a diversion of a portion of the producer's fluid milk market to others. But there is both a legal and an economic level beyond which minimum prices cannot be raised. The Act (Section 2) forbids the raising of prices above the parity level. And, economically, there is a point beyond which increased prices of milk cannot be borne by any handler. The suggestion, however plausible theoretically, proves unsound in practice. Take, for example, the intervener, E. Frank Branon, petitioner in case No. 865, who has sold milk to the petitioner Hood for more than twenty-five years. The effect upon him of the operation of the equalization scheme was to reduce his net return from the sale of milk, despite the increased minimum rates set up in the amended Order.²⁴

The suggestion in the opinion below that the amended Order takes nothing from such a producer because "the blended price is but a minimum that the handler must pay to the producer, and there is nothing in the Act or the Order that prohibits the defendants from paying the higher price to the intervenors" (R. Vol. I, 130) is economically unrealistic. The whole object of equalization is to level out the existing differences between producers selling to dealers with a high percentage of fluid sales and producers not having such outlets. Its very premise is that all farmers should receive the same return for the same quality of milk sold. And, as a matter of economics, it is perfectly plain that it will have that effect. True,

[&]quot;During the month of August, 1937, when the equalization pool included substantially all handlers (R. Vol. II, pp. 163, 164 and pp. 190, 191), the blended price payable to a non-member producer in the 200 mile zone averaged \$2.092 per cwt. (R. Vol. III, p. 227). Corresponding prices posted and paid by Hood during the preceding seven months, when adjusted for normal seasonal variation from the August price, averaged \$2.275 per cwt. The difference is \$.183 per cwt. See Appendix A, infra, p. 126.

the producer is legally free to ask the handler to pay not only the blended price but also an additional amount equivalent to the payment into the equalization pool, and the handler is legally free to do so. But it cannot seriously be supposed that the producer could possibly induce, or the handler take, such action. The amended Order has fixed prices for each class of milk which the Secretary has found are reasonable (R. Vol. II, 48). To assume that the handler can pay to his own producers in addition to reasonable prices further sums equal to the payments he makes to the pool is economically unreal. In the case of the petitioner Hood, for instance, the amount of its equalization charges for the period between August 1 and December 31, 1937, was \$336,891.46 (R. Vol. II, 218). It can scarcely be supposed that any handler could readily pay that sum, or any substantial. portion of it, twice-to the pool and also to its producers. And to assume that producers could induce such payments in excess of prices found to be reasonable is absurd. The Act and the amended Order are predicated upon the assumption that, without the aid of government intervention, the producer does not obtain even a fair price for his milk. Can it be supposed that when the price is increased the individual producer will be able to require the handler to assume not only the increased burd n but more than that? On the contrary, as the master has found, because of economic conditions the tendency of handlers will be to pay no more than the blended price computed by the Administrator (R. Vol. II, 136).24 The theoretical possibility that a producer may escape the effect of the equalization provisions by demanding and receiving payment in excess of the blended price is a ghost

[&]quot;What is fixed is a minimum only. None the less, competition among dealers is so keen that in practice the legal minimum is the maximum that the appellant is able to charge."

elusive to the grasp. We cannot close our eyes to the plain fact that the operation of the equalization scheme was intended to and does take from some producers the benefit of a market they now have.

But the scheme has also a significant effect upon the handler. A handler having more than the market average of fluid milk sales must in each delivery period make a payment into the equalization pool. That payment is used directly for the purpose of reimbursing his competitors who, although they had less than the market average of such sales, have paid the blended price. prevent what the Court below termed "slow death to those handlers who buy at the blended price and are forced to sell great portions of their commodity at the Class II prices" (R. Vol. I, 122), equalization payments are exacted. Thus one group of handlers is required to pay to keep a competing group alive. It is true, as the Court below observed, that handlers who have had the advantage of disposing of the bulk of their milk at Class I prices "have no lien or property right in this preferred market. They cannot corner it and hold it against the power of Congress . . . " (R. Vol. I, 122). But the question is not whether they are entitled to hold their market free from competition, but whether they shall be required to subsidize their competitors.

It was suggested by the government in the Court below that since the handler's total financial obligation is measured by his own sales at the Class I and Class II rates, and since those rates are reasonable, it is a matter of indifference whether he is required to discharge that obligation by paying the whole sum to his producers or by paying part to them and the balance to the pool. He is deprived of no property, it is said, since he must in any event pay the same total amount. But plainly this suggestion is fallacious. Handlers with a high per-

centage of fluid milk sales have always tended to draw producers to them because they have been able to pay a higher net return. (R. Vol. II, 98). They have been in a position to impose more stringent requirements as to the quality of milk production. It is certainly a matter of consequence to them whether they can maintain the same supply by passing on to their own producers the benefits of their fluid milk market or are required. to utilize a portion of those benefits to foster competition against themselves. For the effect of the equalization scheme is not merely to diminish their ability to pay as high a price to their own producers, but to better the economic position of their competitors. Competing handlers are assured that, however small their" own sales of fluid milk, their producers will get as high. a return as any others. The marginal dealer is thus encouraged and enabled to remain in business. He can obtain the same supply of the same milk at the same prices as well established dealers, compel them to bear part of the cost, and compete with them for the fluid milk market. In this way handlers with well established fluid milk outlets are required to furnish their less successfulcompetitors with the means of winning the market in fluid milk. The situation is much the same as if under a minimum wage law an employer's total financial obligation was measured by his profits; the employer having more than the average amount of profits being obliged to pay a minimum wage to his own employees and an additional amount to his competitors to reimburse them for their increased labor cost.

B. The taking of the fluid milk outlets of producers and levying exactions upon handlers for the benefit of competitors in the market is a deprivation of property without due process.

The applicable principles are well settled. In the exercise of its power to regulate interstate commerce, Congress is, of course, bound by the limitation imposed by the Fifth Amendment that it may not take the property of one person for the purpose of conferring a benefit upon another. Railroad Retirement Board v. Alton R. Co., 295 U. S. 330. No matter how great the needs of the beneficiaries to whom such property is transferred, or how gravely the nation may be interested in their welfare, the Fifth Amendment commands that the property of one individual shall not be transferred to relieve another individual's necessities. Louisville Joint Stock Land Bank v. Radford, 295 U. S. 555, 602.

The very principle upon which the equalization scheme rests, that those having valuable markets should be required to surrender them to their rivals so that all may have an equal share of the business, has been already decisively condemned by this Court. In Thompson v. Consolidated Gas Utilities Corp., 300 U. S. 55, a gas proration order, designed to compel the gas producer with valuable market outlets to share such outlets with other producers who had none, was held invalid as a "glaring instance of the taking of one man's property and giving it to another". The mechanism there used was to reduce the allowable production of gas to a point insufficient to meet the contract requirements of producers having facilities for reaching the market so that they were required to buy gas from others having no such facilities. Although here no producer and no handler is required to buy surplus milk from his competitor, each is required, through pooling the receipts of all sales, to contribute part of

the value of his product to his rivals and thus afford the benefits of the market he has to others "who have not contributed in money, services, negotiations, skill, fore-thought or otherwise to the development of such markets" (*Ibid*, 78). "There is a difference in the means employed; but the difference is not of legal significance" (*Ibid*, at 79).

Moreover, like the proration scheme in that case, the equalization provisions operate solely against one group of handlers and producers to the benefit of another. As the record demonstrates, the handlers who at present have the principal fluid outlets and are thus obligated to make equalization payments, are so-called "proprietary" handlers.²⁶ Competing with these handlers in the distribution and sale of milk are numerous cooperative associations (R. Vol. II, 112-115). It was through their votes in the referendum that the amended Order received requisite producer approval (R. Vol. II, 199). These cooperatives presently carry a large percentage of surplus milk. They are thus the chief beneficiaries of the equalization scheme to date.²⁷ And, under the provisions

²⁷Below are tabulated the respective percentages of Class I and Class II milk handled during the delivery periods from August through December, 1937, by (a) the three major cooperatives, (b) the petitioner Hood, and (c) all handlers in the market:

*	Class I	Class II
Three cooperatives	39.84%	60.16%
Hood	83.76%	16.24%
All handlers	62.84%	37:16%

These percentages were computed from sources in the Record as follows: (a) Three cooperatives, R. Vol. II, p. 117; (b) Hood, R. Vol. II, p. 214; (c) all handlers, R. Vol. II, p. 190. It is plain, therefore, that the three major cooperatives carried the principal burden of surplus milk in the market. They were accordingly

²⁶All the defendants considered in the Master's report are private corporations or individuals, not cooperative associations. (See description of the several defendants, R. Vol. II, 212, 226, 237, 240, 243, 246, 253, 255, 257, 260, 263.)

of the Act, they will remain so. Not only will they be able to draw from the pool so long as the balance of fluid milk sales in the market is against them, but if the balance shiffs, they are under no duty to make a corresponding return. For by the terms of the Act, a cooperative association cannot be compelled to make equalization payments. Any such liability which the Amended Order may seek to impose upon it is invalid and cannot This we have demonstrated fully elsewhere. (Appen ix B, p. 127, infra.) Thus proprietary handlers who have fluid milk outlets must always pay without possibility of receiving a correlative return. They are in the same position as the owners of pipe line facilities in the Thompson case who were required to surrender a part of their markets to others without compensatory benefits.

Attempt is made, however, to justify the present scheme on the ground that the equalization provisions are a reasonable regulation in the public interest. It is said that, to prevent destructive price-cutting and disorderly marketing conditions, it is necessary to require all producers and handlers to bear a share of the burden of the surplus and so enable all producers to have a share in the fluid milk market; that the method of distributing the burden and the benefit is reasonable and not arbitrary; and that the resulting benefit to private individuals is but an incidental result of regulation in the public interest. We submit that this justification is not made out.

Unquestionably the existence of a surplus of any commodity tends to induce sharp competition among producers of that commodity and in the absence of regula-

the chief persons entitled to withdraw from the equalization pool. See, for example, the amounts credited to New England Dairies, Inc. and Milton Cooperative Dairy Corporation for the August delivery period (R. Vol. II, p. 192, par. 185).

tion may result in a general lowering of the price level of that commodity. In that sense a surplus of fluid milk, of course, creates a problem. Such was the conclusion of the joint legislative committee of the State of New York28 investigating the milk industry which is referred to by this Court in Nebbia v. New York, 291 U. S. 502, 516-518. Summarizing the conclusion of that committee, the Court said: "So long as the burden is unequally distributed the pressure to market surplus milk in fluid form will be a serious disturbing factor. The fact that the larger distributors find it necessary to carry large quantities of surplus milk, while the smaller distributors do not, leads to price-cutting, and other forms of destructive competition." (Ibid. at 518). The problem created by the surplus is thus the possibility of demoralized markets and ruin of the dairy industry through price-cutting. evil is not the unequal distribution of the surplus as such, but the demoralization that results therefrom when there is no regulation of prices. Faced with such demoralization, the legislature may, as this Court held in the Nebbia case, take appropriate action to prevent it. There, the remedy tried was the fixing of retail prices. Here, it is the fixing of prices to be paid directly to producers. But the question then arises whether, after such prices are fixed, the surplus furnishes a justifiable occasion for the adoption of the scheme here attempted of redistributing purchasing power among individual producers. Once prices are fixed by the government and demoralization of the price structure thus prevented, the destructive competition originally caused by the surplus is eliminated. The possible objection that, in the absence of equalization, the whole structure of prices thus established will fall is unsupported by facts or reason. Because, under a classified price system, producers without

²⁸See Report of Joint Legislative Committee To Investigate the Milk Industry, N. Y. Legislative Document (1933) No. 114.

established fluid milk outlets tend to cut prices when there is no governmental regulation of price, scarcely tends to show that once prices are established by law, illegal price cutting will be widespread. We have no experience to teach us that such violation of law by producers and handlers alike would necessarily or even probably result. Such a conclusion is based purely on conjecture. It is predicated on widespread disobedience of law and inability by the government to enforce specific mandates of Congress. But surely such a complete breakdown of law enforcement cannot be presumed. Nor can it well be argued that handlers with a large supply of surplus milk will be able to cut the resale prices at which fluid milk is sold, thus causing retaliatory price cutting by other handlers and leading to a general collapse of the price structure (R. Vol. II, p. 98, par. 41). For in the Greater Boston Marketing Area there is now, and has been since the amended Order became effective, a complete regulation by the State of retail sales of fluid milk and cream (R. Vol. II, p. 136, par. 101; Vol. III, pp. 76-90). This regulation, similar in substance to that adopted in New York and upheld in the Nebbia case, effectively establishes the level below which resale prices cannot fall.

The very premise on which the Act rests is that the price structure and marketing conditions during either the pre-war period from 1909 to 1914, or the post-war period from 1919 to 1929, were normal. If similar conditions and prices can be restored, the presumption of the Act is that the purchasing power of agriculture will be sufficient to prevent demoralization of commerce in milk. Yet in neither of those periods was there any market-wide equalization in the Boston market, or, so far as appears, in any market. The problem of surplus milk, however, then existed to as great a degree as at present. A consideration of the percentage of surplus carried by the

cooperative controlling 60 per cent of the milk in the entire Boston market (R. Vol. II, 211) shows that the average yearly surplus during the post-war period from 1919-1929 was 41.5 per cent, during the period from 1930-1936 was 40.4 per cent, and during the period from 1933-1936, 43.5 per cent. The amount of surplus in the entire market has therefore remained relatively constant, although there has been a slight increase since 1933 when federal regulation was first initiated.29 There is no evidence in the record tending to show that the surplus is any differently or more inequitably distributed among producers and dealers at present than it was during the base period. or that it will have any evil consequences now that it did not have then. The Act contains no recitals to that effect; the Secretary has made no such finding; and the evidence before the Secretary at the hearings on the proposed orders (Vol. II, p. 43, par. 12, Appendix B thereto, not printed but certified to this Court as an original exhibit) is barren of any such suggestion. It is, therefore, fair to say that no greater or different problems with respect to distribution of surplus now exist than during the base periods when presumptively the existing method of distributing that surplus was not so abnormal as to disturb the free flow of commerce in milk.

But it may be said that considerations, if not of necessity, at least of fairness justify pooling the proceeds of sales of fluid milk in the entire market and giving all producers a share therein. The milk industry, it is asserted, is peculiar in that it is necessary constantly to produce a surplus of 20 per cent of fluid milk because milk, being perishable, cannot be stored from day to day and enough must always be on hand to meet variations in the daily

²⁹This is douldess due to the fact that the increase in price provided for in the federal milk licenses and orders tends to stimulate production and to draw new producers into an already overcrowded market (R. Vol. II, 210).

demand. Thus, producers in the aggregate must always produce a greater supply than is used for fluid purposes. So far as that surplus is disposed of at lower prices the resulting loss should be prorated over the industry as a whole. Such is the argument. The analogy of statutes establishing a common fund for compensation for workmen injured in industrial accidents and exacting contributions to the fund from all employers in industry (Mountain Timber Lumber Co. v. Washington, 243 U. S. 219) and of statutes imposing assessment on banks to create a guaranty fund to make good losses of deposits in insolvent banks (Noble State Bank v. Haskell, 219 U. S. 104; Abie State Bank v. Bryan, 282 U. S. 275) is suggested. But the principle of these decisions cannot be pressed so far as to cover the necessities of the present For it is readily apparent that what is prorated here is the profits of the industry. The risk which is really to be spread is the risk that, because of competitive conditions, some producers will not get as high a return for their product as others. Obviously this goal bears no polation to the scheme, sustained in those decisions, for insuring all workmen or bank depositors against loss not occasioned by their fault, by spreading the financial responsibility for that loss over the entire industry so that the insolvency of one employer or bank would not leave them remediless.

If a lower rate of return to individual producers or groups of producers resulting from an excess of fluid milk constitutes a common hazard which all must share by pooling their profits, then the principle applies equally to every branch of agriculture or industry. For excess production in milk does not differ in its essence from excess production of any commodity. True, there must be a surplus of fluid milk of twenty per cent at the low point of yearly production. True, that surplus normally

increases to something over forty per cent in the spring. But similarly in other fields the need of producing enough to meet fluctuations in daily, seasonal or yearly demand, results in the production of a quantity which, because of changes in public taste, the invention of substitute and competing products or for a hundred other reasons, cannot be disposed of for the purposes for which it was produced or at the most favorable prices. So also under present industrial and technological conditions there exists, and, it is feared by many, must exist, a surplus of labor. Competitive conditions and changing demand leave some always unemployed or employed in less profitable fields.

Nor is the fairness and equity of prorating the surplus readily apparent. The very measures taken to that end tend to enhance the problem and increase the burden which is imposed upon those with fluid milk outlets. For by fixing prices, the amended Order tends to stimulate production in the milk shed and draw new producers into the market (R. Vol. II, 210). No attempt is made to regulate or decrease the surplus or control the amount of milk in the milk shed (R. Vol. II, 210). All farmers are encouraged to produce to the limit and thus make less and less valuable, the markets of those with established fluid milk outlets. Moreover, no account is taken of the extent to which such producers have themselves borne their fair share of the surplus by taking their own steps to limit their production or spread out that production evenly or to produce milk inversely to the normal seasonal variation in supply. * Dealers with high percentage of

³⁰Farmers can and do avoid the normal increased production at particular seasons through regulating feed, breeding times and the like. See Cassells, Study of Fluid Milk Prices (Harvard Economic Studies, 1937) pp. 12, 64-67; U. S. Dept. of Agriculture, Some Problems in Establishing Milk Prices (1937) pp. 47-53, 101; Black, The Dairy Industry and the AAA (Brookings Institution, 1935) p. 182.

fluid sales often encourage or require their producers to prevent seasonal surplus by levelling out production. And the fact that certain producers are able to become connected with them is thus not entirely fortuitous. For such producers to accept a pool price "obviously means surrendering all the gains they have made by evening out their production. Some can, in a few years, adjust their production back to a less uniform basis and prosper as much as before, but many of them cannot—they have special advantages for the more uniform type of dairy production." The doctrinaire conception of the amended Order, that all differences in return are inequitable, completely ignores these considerations.

This proposed scheme is not supported by any previous decisions of this Court. The basis on which the socalled pooling cases are rested is plainly inapplicable. There ulterior public advantage in the protection of workmen and depositors justified what was termed "a comparatively insignificant taking of private property, for what in its immediate purpose is a private use" (Noble State Bank v. Haskell, 219 U. S. 104, 110). But here, as we have shown; the taking both immediately and ultimately inures to the benefit of rivals in the market. And the amount taken can by no stretch of the imagination be termed insignificant, either absolutely or comparatively. There, too, it was considered that "the share of each party in a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume" (Noble State Bank v. Haskell, supra,

³¹U. S. Dept. of Agriculture, Some Problems in Establishing Milk Prices (1937), pp. 96-103.

²²Black, The Dairy Industry and the AAA (The Brookings Institution, 1935) pp. 193, 194; cf. pp. 294-296. See also Cassells, Study of Fluid Milk Prices, pp. 61, 62; U. S. Department of Agriculture, Some Problems in Establishing Milk Prices (1937), p. 138.

at 111). But here there is clear lack of mutuality, as we have demonstrated. The proprietary handlers and their producers must contribute; the cooperative associations and their producers receive, but need not pay. That there are limits beyond which the pooling principle may not be carried was pointed out in Railroad Retirement Board v. Alton R. Co., 295 U. S. 330, in which the establishment of a unitary pooling system among railroads to provide pensions for superannuated railroad employees was held to constitute a taking of property without due process. Noting that unequal contributions were required from different carriers, that some always paid while others received, the Court ruled that the scheme could not be sustained on the basis of prior decisions as simply a joint adventure with mutuality of obligation and benefit. The equalization plan in the amended Order goes even further. A fortiori, it finds no support in the cases sustaining workmen's compensation and bank insurance Those decisions clearly did not lay down the funds. sweeping principle that either banks or employers could be required to guarantee their rivals against the possibility of losing money.

Appeal to decisions of this Court sustaining the provisions of the Transportation Act of 1920 for the division of joint rates and for the recapture of excess earnings (The New England Divisions Case, 261 U. S. 184, and Dayton-Goose Creek Ry. v. United States, 263 U. S. 456) in support of the present scheme is likewise futile. In The New England Divisions Case, the provisions of the Transportation Act of 1920 authorizing the establishment of joint rates and "just, reasonable and equitable divisions thereof as between carriers" were attacked as unconstitutional on the ground that the apportionment of a joint rate appropriated the property of one carrier for the benefit of another. The system of group rate

making and division of such joint rates was based, as the Court noted, upon the facts that, while many of the railroads were receiving ample revenues, others could not continue operation unless additional funds were procured; that increase of the rates of the needy roads alone might kill traffic on those roads and provoke more serious competition from automobile and motor carriers; and that a general rate increase, high enough to afford the needy roads relief, might give the prosperous roads an unreasonably large return upon their properties. In sustaining the apportionment of the increased joint rate, the Court pointed out that the revenues of the prosperous roads were not taken to support the weak; they still were entitled to, and still received, a fair return on their property; the increase was paid by the community, not from the treasuries of the prosperous roads. The suggestion will doubtless be made that the equalization scheme here under consideration is, like the division of joint rates, a method of apportioning an increased rate among producers according to their needs, that the producer selling to a dealer with a high percentage of fluid sales stands in the position of the prosperous roads and that nothing is taken from him by awarding to more needy producers a larger share of the increased prices. But me attempt to draw the analogy must fail. The attempted distribution of the fluid milk market cannot be sustained on the basis that one group of producers now has sufficient revenue and another group must have more if it is to continue in business. As we have already pointed out, . there are no facts either in the record or subject to judicial notice tending to show that the general increase in price effected by the amended Order will not afford relief. to the farmers disposing of their milk largely for non fluid purposes, that they cannot continue in business without receiving a larger share of the increased price, or,

that those having fluid milk outlets will receive an unreasonably large return. Nor does the producer with fluid milk outlets stand in the position of the complaining railroads in The New England Divisions Case. The effect of apportioning the increased rate left the prosperous railroad with all that it originally had and all that it was constitutionally entitled to-a fair net operating return upon its properties devoted to transportation. It was, at the very least, in the same position it held before the joint rates were increased and divided. But the effect of the present equalization scheme, as we have shown, is to leave some producers worse off than they were—to take part of what they otherwise would have received from the handler to whom they sold, and to take it without any consideration of their costs or of the rate of return left to them.

The same considerations serve to dispose of Dayton-Goose Creek Ry. Co. v. United States, 263 U. S. 456, as a pertinent authority. There the recapture provisions of the Transportation Act of 1920, which required carriers to contribute their earnings in excess of a certain amount to provide a fund to be used by the Interstate Commerce Commission in making loans to other carriers, were upheld. To be sure, the railroad whose excess earnings were taken was economically in a worse position by reason of the taking than it was before, since what was taken was earnings which had already accrued to it. But the validity of the taking was rested on the fundamental proposition that

"The carrier owning and operating a railroad, however strong financially, however economical in its facilities, or favorably situated as to traffic, is not entitled as of constitutional right to more than a fair net operating income upon the value of its properties which are being devoted to transportation." (Ibid, at 481.)

And the Court pointed out that

"The reduction of the net operating return provided by the recapture clause is, as near as may be, the same thing as if rates had all been reduced proportionately before collection." (*Ibid*, 483.)

Manifestly the taking from the producer of the benefit of his fluid milk outlets cannot be rested on these principles. It cannot be said that the producer "by investment in a business dedicated to the public service" must recognize that his obligation limits him to a fair and reasonable profit. Unlike the railroad he has not received a franchise as a quasi-monopoly requiring him in exchange to forego the right to profits in excess of a reasonable return. And even if he had, that fair and reasonable profit must be ascertained and rates established which will give him at least that. Of course, the equalization scheme makes no attempt to fix such rate for any individual producer or group of producers. The difference between it and the recapture clause is apparent.

We submit, therefore, that the equalization scheme is unsupported by authority and cannot be justified as an appropriate or necessary method of achieving the legitimate end of protecting interstate commerce in milk. Like the gas proration order considered in the *Thompson* case it is a glaring example of taking the valuable markets of some for the sole benefit of their competitors. As such, it stands condemned under the Fifth Amendment.

Ш.

THE AMENDMENTS TO ORDER NO. 4 ARE VOID FOR LACK OF THE ESSENTIAL FINDING REQUIRED BY SECTIONS 8c(17) and 8e OF THE ACT.

In discussing this point we shall show: first, that the Secretary of Agriculture used the post-war base period for the purposes of the amendments to Order No. 4; second, that the Act required the Secretary before using the post-war period as the base period for the purposes of such amendments to find and proclaim in connection with the issuance of such amendments that satisfactory statistics were not available for the pre-war period; third, that the Secretary did not make that finding and proclamation in connection with the issuance of the amendments to Order No. 4; and, fourth, that the absence of the pre-scribed finding invalidated the amendments.

A. THE POST-WAR BASE PERIOD WAS USED FOR THE PUR-POSES OF THE AMENDMENTS TO ORDER NO. 4.

The amendments to Order No. 4 themselves involved use of the post-war base period, 1919-1929. That fact was admitted throughout the trial before the master and in the hearings in the district court. It is clearly demonstrable.

The amendments to Order No. 4 changed the original order in respect to all three of the elements affecting the prices received by producers. These changes involved computation of the parity price which the producers should receive and that computation necessarily involved use of a base period. The post-war period was taken. The principal price tables introduced at the hearing on the proposed amendments showed only the price levels during the years 1919-1929 (R. Vol. II, p. 43, Appendix

B at pp. 54, 55, 58 and Exh. 2 thereto, at pp. 74, 89-93).**
On the basis of this hearing, moreover, the Secretary issued the amendments and reaffirmed a prior finding that the prices fixed would tend to achieve parity with the post-war levels (R. Vol. II, pp. 46, 48, par. 15).

B. Sections 2, 8c(17) and 8e Prohibit Use of the Post-War Base Period for the Purposes of Amendments Unless the Secretary Finds and Proclaims in Connection With Their Issuance that Satisfactory Statistics Are Not Available for the Pre-War Years.

Section 2(1) of the Act states the policy of raising farm prices to parity with their level in the base period; it establishes the pre-war years, 1909-1914, as the base period in the case of milk. Section 8c(4) together with section 8c(17) limits the power of the Secretary to the issuance of orders and of amendments tending to achieve that purpose. Section 2(2)(b) prohibits action raising prices above that level. There is a single exception, based upon necessity. Section 8e provides that if the

³³Appendix B attached to the Master's Report is not printed but was transmitted to the Clerk as an Original exhibit by order of the district court. (R. Vol. I, p. 134.)

[&]quot;The pre-war period was selected as the primary base period for most commodities in preference to the post-war decade primarily for two reasons. First, in the latter period the relationship between the prices of farm and industrial products was not normal. Second, the pre-war period is the most recent period when "economic conditions, as a whole, were in a state of dynamic equilibrium". Ezekial and Bean, Economic Bases for the Agricultural Adjustment Act, United States Department of Agriculture, 1933, pp. 26, 28. A parity price for milk, received by producers, in August 1937 would have been \$2.25 if the pre-war period were taken as the base and \$2.32 with the postwar period as a base. These prices are calculated from statistics published by the Department of Agriculture "for use in developing market agreements". See Appendix C, pp.

Secretary finds and proclaims in connection with the issuance of an order that no satisfactory statistics are available to show the purchasing power of the commodity during the pre-war period, then the base period "for the purposes of such order shall be" the post-war period, 1919-1929. When the Secretary made such a finding and proclamation in connecting the issuance of Original Order No. 4, its effect under section Se was to establish the years 1919-1929 as the base period for the purposes of that order and that order only, leaving applicable for all other purposes the pre-war base period specified in section 2. Consequently, when the time came for issuing the amendments to Order No. 4, the pre-war base remained controlling until the Secretary should make a finding in connection with the issuance of the amendments, which if made would have fixed the post-war years as the base period of those amendments. He had the power to do this for section 8c(17) expressly states that the provisions of section 8e shall be applicable to amendments to orders. He had no power, however, to use the post-war period in defiance of section 2 without making the finding because the only power to use that period is conditioned by section Se upon the finding being made in connection with the action being taken:

The correctness of the foregoing interpretation is shown by two propositions. First, the exception in Sec-

¹³¹⁻¹³³ infra. The Secretary did not use the post-war parity price stated above, basing his calculations instead on entirely different statistics that aimed at parity only for Class I milk (See R. Vol. II, p. 43, Appendix B, Exh. 2 thereto). However the difference between the post-war and pre-war parity prices stated above may be taken as a measure of the difference in result obtained by the use of the post-war period instead of the pre-war period. Applied to the total purchases of milk from producers by the petitioners H. P. Hood & Sons, Inc. and Noble's Milk Company during the first five months of the operation of Amended Order No. 4, August 1, 1938 to December 31, 1937, this difference of \$.07 per cwt. amounts to \$64,063,32.

tion 8e to the mandate in section 2(1) is not broad enough to cover the issuance of amendments involving use of the post-war base period unless they are accompanied by a new finding. Second, the Act taken as a whole and section 8c(17) in particular require a new finding to be made in connection with the issuance of such amendments.

1. A section se finding in connection with the issuance of an order does not establish the post-war period or any part thereof as the base period for the purposes of amendments to the order.

Section 8e provides:

"In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period, August 1919-July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture." (Emphasis supplied.)

The italicized words make it clear that the proclamation of a finding by the Secretary in connection with the issuance of an order does not fix the base period as the postwar period for all purposes, present and future, but only "for the purposes of such order", that is to say, the order in connection with the issuance of which the finding was made. Use of the post-war base period without a new finding and proclamation for any other purposes would

be outside the exception established. Plainly the Secretary is required to make a new finding and proclamation that satisfactory statistics are not available for the prewar base period before he may issue a new order predicated on the post-war base period. Section 8e is the only exception to the mandate of section 2. Section 8e declares that after a finding and proclamation is made in connection with an order, the post-war period shall be the base period "for the purposes of such order". Under the plain language of Section 8e, each finding in connection with an order fixes the base period for that order only. Consequently a finding in connection with one order cannot be held to fix the base period for another and subsequent order.

The question here involved is whether the establishment of a base period "for the purposes of such order" is the establishment of the base period for the purposes of any amendments to the order in connection with which the finding and proclamation were made. If it is, then the amendments to Order No. 4 were properly issued. If, as we submit, it is not, then a new finding should have been made in connection with the issuance of the amendments.

The practical function of a base period shows that the words "for the purposes of such order" do not include the purposes of amendments to the order but refer to the purposes for which a base period is used in the issuance of an order. The specification of a base period is significant because it supplies the tools for the formulation of the order's terms. Prices fixed for milk must tend to be parity prices, and determination of the parity price involves ascertainment of the purchasing power of milk during the base period. That requires, first, statistics showing the prices received by milk producers during the base period and, second, a series of index-

numbers showing the relative cost of articles bought by the producers in the base period and at the present time. A price is then fixed which dill reflect the percentage of change shown by the innex numbers. That is the parity price. (R. Vol. II, p. 205, par. 213). Promulgation of terms which do not fix prices but which also govern the farmer's return—for example, provision for a base rating scheme to control surplus—requires a similar use of base period statistics to determine the precise level of purchasing power to be attained.

After these computations the Secretary must then summarize his conclusions and find that the order and all its terms will tend to raise the producers' purchasing power to parity with the level shown by the statistics (section 8c(4)). And, if handlers fail to agree to the regulation he must also determine that its issuance is the only practical way to achieve that result (section 8c(9)(B)). In short, the specification of a base period "for the purposes of an order determines the level of purchasing power to be attained by the order and designates the statistics to be used in its formulation and issuance.

The issuance of amendments involving use of a base period is a new and separate step. They require similar but their own computations, involving a reexamination of the past prices of the commodity and of the past and present costs of articles bought, in order that the Secretary may formulate their terms and make the findings prerequisite to their issuance. In doing so, he needs to use a base period but that use is not use for the purposes of the original order any more than it would be if the amendments were in the form of an entirely new order. Consequently, the words "for the purposes of such order" do not include the different purposes of amendments to an order. The base period has chiefly a

practical function. The quoted words must be given a practical sense.

The Secretary recognized this distinction in his proclamation in connection with original Order No. 4,-"the period August 1919-July 1929 is hereby found and proclaimed to be the base period to be used in connection with ascertaining the purchasing power of milk . . . for the purpose of the execution of a marketing agreement and the issuance of an order" (R. Vol. II, pp. 6.7, par. 4. (Emphasis supplied.)). He seems to have used that phraseology uniformly in all his proclamations under section 8e of the Act. *5 The choice of words is significant. The Secretary has no power to limit or expand the purposes for which the post-war period is to be used upon his making the specified finding and proclamation. Consequently the Secretary must have been describing in his proclamation what he understood to be the effect of his finding and proclamation, and therefore by stating that the post-war period was to be used "for the purpose of the issuance of an order" the Secretary showed that he believed that to be the effect of Section 8e.

The fact that amendments may and often do differ from new orders only in name furnishes another strong practical reason for concluding that the words "for the purposes of such order" were not intended to include the purposes of amendments to the original order in connection with which a finding has been made. Amendments are not part of the original order. The familiar practice in legislative bodies of striking out all but the enacting clause and substituting new substantive provisions shows how thorough-going an amendment can be. An administrative

<sup>Federal Register 607, 647, 683, 1125, 1329, 1690, 2023, 2100;
Federal Register 502, 504, 1188, 1942;
Federal Register 735, 1140, 1741, 1779, 1893, 1957, 2439;
Federal Register 403, 989, 1198.</sup>

official may by amendments to his orders follow the analogy and accomplish an equal change. Hence, amendments may be substantially the same as superseding orders, which require a new finding if the post-war period is to be used. This was clearly true of the amendments in the instant case.

In form the amendments to Order No. 4 were a new and separate order; they were promulgated under the title "Order of the Secretary of Agriculture... amending Order No. 4..." (R. Vol. II, p. 46).

In substance they were a new order. Original Order No. 4, if not legally at least practically, was dead from prolonged suspension (R. Vol. II, p. 36, par. 73 R. Vol. II, p. 40, par. 10). For more than ten months there was no order in force; there was in Boston no federal regulation of milk. The Secretary manifestly considered that he was beginning again. He first gave notice of hearings upon a proposed new order (R. Vol. II, p. 37, par. 8). Even after he had terminated the suspension of the original order (R. Vol. II, p. 40, par. 10) and had proposed the amendments, he told the farmers that when they voted upon the amendments their real choice would be between them and no order at all (R. Vol. II, pp. 195-198, pars. 192, 193, 195 and Exh. 14 and 15 at R. Vol. III, pp. 160, 161):

The content of the amendments and the changes they made show that the amendments wrought a system that was new. The original order had the fundamental purpose of increasing the returns to milk producers by forcing handlers to pay a blended price. Three factors controlled the amount of that price: the Class I price, the Class II price and the percentage of market surplus or Class II milk included in the pool. In other provisions the adminstrative framework was set up. Only the ultimate purpose and part of the framework were con-

tinued in the amendments. The factors controlling the blended prices were radically changed. The Class I price was altered; the formula by which the Class II price was to be established for each delivery period was changed; and, most significant of all, the base-rating scheme which gave some control of the surplus in the pool was entirely abolished. The amendments, therefore, changed the regulation in its most vital aspects and established an order which taken as a whole was new.

Thus both the form and the substance of the amendments to Order No. 4 furnish a striking illustration of. the reality of the distinction between an order and amendments thereto. Throughout the Act Congress preserved in the words the difference in substance. Where it meant both orders and amendments it used both words (e.g., sections 8a(7), 8c(1), 8c(16)(C), 8c(18)). Where it used "order" alone (e.g., sections 8c, 8d, 8e) it appears to have done it consciously for it elsewhere expressly stated that amendments should be governed by the provisions applicable to orders just as if they were entirely new (section 8c (17)). Nor is there any reason for stretching the phrase, "for the purposes of such order", so that it will include the purposes of amendments. In the first place, the Secretary has ample power to make the necessary finding and establish the post-war period as the base period for the purposes of the amendments. Section 8c(17) provides that section 8e shall be applicable to amendments as well as to orders. In the second place, section 8e is an exception to the general rule established in the declared policy of the Act. As such, it should be narrowly constrned.

2. The Act affirmatively requires a finding and proclamation of unavailability of satisfactory pre-war statistics to be made in connection with the issuance of amendments involving use of the post-war base period.

Hitherto we have considered the scope of the exception in section 8e to the general rule of section 2. It appears to be too narrow to cover amendments involving use of the post-war base. Any possible doubt, however, is fore-closed by the fact that the Act affirmatively requires a new finding to be made in connection with such amendments. This may be shown in three ways.

First, orders under the Act may be issued either with or without executed marketing agreements (sections 8c (8), (9)). If an amendment to an order that has been issued with an executed marketing agreement is proposed, obviously that must be accompanied with a new agreement (sections 8c(17), 8c(8)). Any modification of a marketing agreement is a new contract. It may even be signed by different handlers. The finding and proclamation made in connection with the former agreement established the post-war period as the basis "for the purposes of such agreement" only. Therefore, a new agreement must be issued, and clearly the issuance of a new agreement must be attended by all the formalities required by section 8e if other than pre-war parity prices are to be attained. This is so although the new agreement follows and supplements an earlier agreement that was issued under section 8e.

Manifestly, the same finding and proclamation under section 8e must be made for amendments to orders issued in connection with executed marketing agreements as for the amendments to the marketing agreements themselves. It would be absurd to require it in the one case and not in the other. Agreements and amendments are pro-

mulgated together and must contain parallel terms, (section 8c(8), (9), (17)). The one finding and proclamation would suffice for both.

The same result obtains where, as in the instant case, orders are issued without executed marketing agreements. (See R. Vol. II, pp. 44, 45, par. 14.) The procedure is identical. The single variance is that a majority of the handlers in the market fail to execute the proposed marketing agreement. In that event the failure is supplemented by the determination of the Secretary specified in section 8c(9). But amendments to orders issued without marketing agreements are, by the specific requirement of the statute, accompanied with new proposed marketing agreements. Since a strict compliance with the provisions of section 8e is required whenever a new marketing agreement is proposed, it follows that these requirements must likewise be observed whether the earlier order was issued with or without a signed marketing agreement.

The second indication that amendments involving use of the post-war base period must be accompanied by a new section 8e finding is the structure of the Act. It shows that amendments are to be treated exactly as orders.

Section 8c(1) empowers the Secretary to issue and amend orders subject to the provisions of the following subsections. The first fifteen of them set forth a comprehensive scheme of administrative regulation. They are phrased in terms of orders only. They prescribe the procedural steps (sections 8c(3), (4)), and the administrative findings essential to the issuance of a valid order (section 8c(4)), the terms which may be included (sections 8c(5), (7)), and the producer approval to be obtained (sections 8c(8), (9), (12)). Then follow provisions detailing to whom (sections 8c(10), (13)), and to

what regions an order may apply (section 8c(11)), what its consequences shall be (section 8c(14)), and how a handler may obtain administrative relief (section 8c(15)). The next to the last subsection of the original section 8c then rounded off the scheme by provision for the suspension and termination of orders, (section 8c(16)). Section 8c(17) was the last; it provides that the preceding subsections of section 8c and the provisions of sections 8d and 8e applicable to orders shall be applicable to amendments to orders. Sections 8d and 8e are similarly phrased in terms of orders only. They are a fundamental part of this structure for administrative regulation. Doubtless, they were set out apart from section 8c solely because they apply not only to orders but also to the marketing agreements authorized by section 8b.

Passing over section 8c(17) for the moment, it is plain that these sections, 8c, 8d and 8e, establish a complete system for the formulation, issuance, administration and termination of orders ale e. Each new order whether it supplants an old one or touches a new field must be formulated and issued precisely in the manner of an old. With respect to establishment of a base period this is doubly clear. Section 8c(4) refers to the pre-war base period established by section 2. Section 8e provides that after the specified finding has been made in connection with the issuance of an order, "the base period, for the purposes of such . . . order, shall be the post-war period". Thus, section Se does not give the finding the effect of establishing the post-war period as the base for the purposes of future orders regulating the same commodity. Each of them would require a new finding before the post-war period could be used.

^{3*}Subsections 18/and 19 were added by amendment in 1937, two years after the other sections were enacted. See Appendix E, infra.

In that system of administrative procedure and regulation amendments have no separate place and had section 8c(17) been omitted no provision would have been made for them beyond their bare mention in section Sc(1). Section 8c(17), however, incorporate that system by reference and establishes it for amendments also. And, this includes the requirement that a finding be made under section 8e before any use of the post-war base period for the purposes of amendments. In effect section 8c(17) directs section 8e to be read "In connection with . . . the issuance of any order or amendment thereto, if the Secretary finds and proclaims . . . the base period for the purposes of such order or amendment thereto as the case may be ... shall be the post-war period ... "

By the structure of the Act, therefore, any ambiguity concerning the meaning of section 8e is dispelled. Section 8c(17) shows plainly that amendments are to be treated as new orders, that the same finding that the policy of the Act will be effectuated must be made in each instance, that the same determinations of producer approval are necessary and that the same procedural safeguards are required.

The third indication that the Secretary must make the specified finding and proclamation in connection with the issuance of amendments based on the post-war period is the language of section 8c(18) of the Act. Section 8c(18) was first enacted in the Marketing Agreement Act of 1937 two years after the law first became effective in 1935, and shows what Congress believed it had already required by sections 2, 8c(17) and 8e. The Secretary is specifically directed, prior to prescribing "any term in any marketing agreement or order or amendment thereto". if that term is to fix milk prices, to compute a parity price "in accordance with section 2 and section 8e". By giving these identical instructions for making agreements, for issuing orders and for issuing amendments it requires the same acts to be performed in each instance. Since obedience with respect to an agreement or order would always involve either use of the pre-war base fixed in section 2 or the contemporaneous finding and proclamation described in section 8e, the latter act must be also necessary to the valid issuance of amendments based upon the post-war period.

It is no objection to this construction of the statute that the Secretary might be required to make a finding under section 8e in connection with the issuance of any amendment, however trivial. Such requirement would impose no serious burden upon the Secretary since in determining the availability of adequate statistics he need consider only such statistics as are available in his own department. The burden on him would be negligible compared with the burden of holding hearings, determining whether the amendment has the necessary producer approval and complying with the other procedural requirements of section 8c which are clearly made applicable to amendments by section 8c(17). Particularly is this so since in the instant case the amendments to Order No. 4 were of such a fundamental character as directly to involve the use of a base period.

In the court below respondents suggested that if the Secretary made a section 8e finding and proclamation in connection with an order then it was unnecessary for him to make a new one in connection with the issuance of amendments to that order. The first difficulty in so construing the Act is that it creates a single exception to directions given to the Secretary by section 8c(17)—directions to treat amendments just like orders for the purposes of section 8c, section 8d and section 8e. There is no warrant for reading that exception into section 8c(17). Taken at its face value, it requires the Secretary

to discover his duties and powers in the issuance of amendments by substituting "amendment" for "order" in every instance in which it is used in sections 8c, 8d and 8e.

The second objection to the respondents' interpretation of the Act is that under it the reference to section Se in section Sc(17) is vain. Plainly under that interpretation Section 8e would provide that if the stated finding is made, the base period for the purposes of such order and its amendments "shall be" the postwar period or that part of it for which the Secretary finds statistics to be available. If in issuing an order the Secretary made such a finding and used the postwar period or any part of it, the mandatory "shall be" would prevent him from making a change when he issued the amendments. And therefore the reference to section 8e in section 8c(17) could not be held to authorize a change without creating an inconsistency between section 8c(17) and the provisions of section 8e. Nor could the reference be simply an injunction to use the same base period as was used for the order. Upon respondents' interpretation, section 8e is that. The single function the reference might perform would be to make it possible for the Secretary to use the post-war period for amendments to an order which had been based upon the pre-war period. That interpretation, however, disregards the plain meaning of the words and the fact that section 8c(17) is applicable to amendments generally and not simply to a very few.

The third objection is the serious difficulties which would be created in the construction of section 8c(18). Beyond a doubt that section verbally requires the Secretary to take the same steps in computing a parity price in amending an order that he takes in issuing it. But if without a new finding section 8e permits and requires

the same period to be used for amendments as was used for orders, then not only are the same steps not required but they are forbidden. A new order could be based on pre-war statistics which became available but an amendment could never be if the order had been based on the post-war period or a part of it. Section 8c(18) seems incapable of being read in any way which would sanction that result, and, since it cannot be, section 8e should be given the normal meaning of its words and left to fit into the structure of the Act.

3. The policy of the Act shows that Congress intended to condition the power of the Secretary to use the postwar period for the purposes of amendments upon a contemporaneous finding under sections 8c(17) and 8e.

The practical and economic reason for the requirement that there be a new finding in connection with issuance of each amendment is clear. Section 2 sets forth the dominant purpose of the Act in the declaration of the policy to establish farm prices at parity with their level during the pre-war base period and no higher. The rest of the Act must be read with that intention in view. section 8e a secondary base, the post-war period, was established as a substitute to be used only if the Secretary found and proclaimed that lack of statistics made impossible attainment of the primary goal. Conceivably, Congress might have ordained that a single finding for each regional classification of a commodity should once and for all change the base period. It did not. Section 8e shows that the Congress believed that economic research is progressive and that the necessity might at any time be removed, for that section plainly requires the pre-war statistics to be examined and their unsatisfactoriness to be proclaimed before the post-war period should be used in a new order supplanting an old one. The reasonableness of that belief has already been proved; between the promulgation of Order No. 4 and its amendment the Department of Agriculture prepared statistics showing the pre-war prices of milk for the expressed purposes of use in administrative regulation under the present statute (R. Vol. II, p. 207, par. 215, Vol. III, pp. 201-209).

Having formed that intention, it remained for Congress to fix the time when the Secretary should reconsider the possibility of achieving the primary goal. Had overpowering weight been given to the dominant purpose that the pre-war period be used whenever possible, the Secretary would have been directed to watch continuously for new and satisfactory statistics and to make the change when they appeared. Because that would be unduly burdensome the primary goal was so far abandoned. It was not unduly burdensome to require the investigation in connection with the issuance of a new order or of amendments to an old because at such a time the Secretary would in any case be making parity computations and considering pertinent economic data. In short, since dates for investigating statistics were to be fixed, those occasions were appropriate. And in order to make certain that every appropriate chance to return to the dominant purpose would be taken, the Secretary was given no power to take any action aiming to establish prices at parity with those in the postwar base period unless he first found and proclaimed that statistics for the prior period were still unavail-

Another instance is the development of statistics showing grape-fruit prices. In that instance the Secretary did in fact change the base to use them. See 4 Federal Register 971. The recent development of a price series for Vermont covering more than a century shows how fruitful research in this field may be. See PRICES PAID BY FARMERS FOR GOODS AND SERVICES AND RECEIVED BY THEM FOR FARM PRODUCTS 1790-1871, WAGES OF FARM LABOR, 1780-1937, T. M. Adams, University of Vermont and State Agricultural College (1939).

able. The necessity of making the finding would force the Secretary specifically to direct his mind to the question and thus would tend to prevent an inadvertent use of the post-war base period to ascertain the purchasing power of a commodity at a time when the pre-war period could be used. The instant case furnishes an example, for when Order No. 4 was amended there were available new statistics which upon their face appear satisfactory and which the Secretary seems never to have considered.**

If a section Se finding in connection with the issuance of an order fixed the base period for the purposes of amendments, the Secretary would be hindered, not aided. in effectuating the declared policy. Economic data rapidly changes; what seemed satisfactory may in time be shown unreliable and gaps in data may later be, abridged. 36 But, if section 8e has the meaning respondents would give it and declares what the base period "shall be" for amendments, then the Secretary could make no change from all or part of the post-war period used in connection with an order without promulgating a wholly new order instead of issuing amendments to change certain parts. It is certainly important, and in accordance with the intention of the Congress, to construe the Act to allow him that latitude rather than to bind him to undesirable statistics, especially when that construction

of Agriculture in February 1937 states that it was constructed to remedy inadequacies and "for use in developing marketing agreements." R. Vol. II, p. 207, par. 216, Vol. III, pp. 201, 202. See Appendix C, infra, pp. 131-133.

³⁹The Secretary used the pre-war period in an earlier Boston license. R. Vol. II, pp. 206-207, par. 214, 215. He must have found it could properly be used. These statistics were found unsatisfactory in promulgating Order No. 4. R. Vol. II, p. 6, par. 4. Subsequently statistics were then developed for use in this connection. See footnote 38, supra.

alone will effectuate the policy of the Act by requiring use of the pre-war base period as quickly as the opportunity arises. Section 2(2), however, does more than state an aim; it specifically denies to the Secretary power to take any "action" aimed at raising prices above the pre-war level. Since the issuance of amendments involves administrative "action", the occasion of their issuance is not only a convenient but a necessary occasion for the Secretary to be required to re-examine the pre-war statistics lest he take action raising prices to a level which examination of the new pre-war statistics would show to be higher than the ceiling fixed by section 2(2) of the Act.

C. THE SECRETARY MADE NO FINDING AND PROCLAMATION OF THE UNAVAILABILITY OF PRE-WAR STATISTICS IN CONNECTION WITH THE ISSUANCE OF THE AMENDMENTS TO ORDER NO. 4.

The Secretary admittedly made no separate or express finding and proclamation concerning the availability of satisfactory pre-war statistics in connection with the issuance of the Amendments to Order No. 4 nor in connection with the proposed marketing agreement to accompany it. No evidence of one was offered at the hearing (R. Vol. II, p. 75, par. 17); and the Court will take judicial notice that none was made. Caha v. United States, 152 U. S. 211, 221, 222; Heath v. Wallace, 138 U. S. 573, 584; Thornton v. United States, 271 U. S. 414, 426.

In the district court the respondents argued and the judge held that in the recitals preceding the amendments the Secretary impliedly reaffirmed his original finding and proclamation and that this implied reaffirmation was a sufficient compliance with the requirements of sections 8c(17) and 8e (R. Vol. I, pp. 114, 123). The particular recital on which reliance was placed states:

"Whereas the Secretary finds upon the evidence introduced at the hearing upon such proposed amendment, said findings being in addition to the findings made upon the evidence introduced at the hearing on said order, said original findings being herewith ratified and affirmed . . ." (R. Vol. II, pp. 46, 48, par. 15, emphasis supplied).

Only "said original findings" were ratified. The word "said" plainly refers to original findings which had already been mentioned. The only original findings mentioned in the entire amending order were those made upon the evidence introduced at the hearing on the original order. Therefore they were the only ones reaffirmed.

The finding and proclamation that statistics were not available for the pre-war years was not one of these. That finding and proclamation was made on January 25, 1936, and neither had to be nor purported to be made on evidence introduced at the hearing conducted the month before (R. Vol. II, pp. 6, 7, par. 4). Moreover. when in February, 1936 the Secretary issued Order No. 4, he recited first that he had made the finding and proclamation as to the base period and then in the following paragraph recited that he now made certain findings upon the evidence introduced at the hearing on the order (R. Vol. II, pp. 10, 12-15). Nowhere among these findings on the evidence is the unavailability of statistics mentioned. Those contrasting recitals show plainly that the section 8e finding was intentionally omitted from the group of findings made upon the evidence introduced at the hearing. Therefore it was not reaffirmed.

There is a second indication that the Secretary in the quoted recital did not intend to make a finding and proclamation that satisfactory statistics were not available to show the purchasing power of milk in the pre-war

period. His consistent practice in proceeding under section 8e has been to issue a formal finding and proclamation distinct from any other recitals or determinations. R. Vol. II, p. 6, par. 4; 1 Federal Register 607, 647, 683, 1125, 1329, 1690, 2023, 2100; 2 Federal Register 502, 504, 1188, 1942; 3 Federal Register 735, 1140, 1741, 1779, 1893, 1957, 2439; 4 Federal Register 403, 989, 1198. The fact that this practice was not followed here tends strongly to show that the Secretary did not intend by the recital in the amending order to make the finding and proclamation contemplated by section 8e.

That conclusion is indisputable but it is not necessary to go so far. Where a statutory finding is required the finding must clearly and expressly appear; it cannot be supplied by implication or by a strained construction of the words. Mahler v. Eby, 264 U. S. 32, 44; Panama Refining Co. v. Ryan, 293 U. S. 388, 433; Atchison Ry. v. United States, 295 U.S. 193, 202. Even if the plain meaning of the language used in the amending order could be disregarded and even if all the facts leading to the conclusion that the original section 8e finding was not made upon evidence introduced at the hearing could be disregarded, still the question would remain evenly balanced. There would be utter doubt whether the Secretary in fact found in connection with the issuance of the amendments that statistics were not then available for the prewar period; the statute's requirement of a "finding" would not have been met. "The difficulty is that it [he] has not said so with the simplicity and clearness through which a halting impression ripens into reasonable certitude. In the end we are left to spell out, to argue, to choose between conflicting inferences. Something more precise is requisite in the quasi-jurisdictional findings of an administrative agency.". Justice Cardozo, in United States v. Chicago, M. & St. P. & P. Ry., 294 U. S. 499, 510.

The principal that a finding upon which power is conditioned must be clearly and certainly made is peculiarly applicable to the instant case. Whatever may be the precise purpose of the requirement that the ecretary "proclaim" as well as "find", it is at the very least an emphatic direction to make an announcement of the finding as clear, as specific and as express as the similar findings required of other administrative officers and agencies. The recital preceding the amendments to Order No. 4 does not meet that test.

D. THE AMENDMENTS TO ORDER No. 4, BEING UNSUP-PORTED BY THE PRESCRIBED STATUTORY FINDING AND PROCLAMATION, ARE VOID.

The Marketing Agreement Act of 1937 grants to the Secretary a power to issue orders and amendments regulating the dairying industry, but that power is a conditional one. It exists only upon his ascertaining certain specified facts. For example, the power to issue a regulation is limited by the statutory requirement that the Secretary shall issue it only after he finds that it will tend to accomplish the purposes of the Act (sections 8c(4), 8c(17)). One essential characteristic of administrative regulation is that the action taken is action which an expert has found will achieve a result. The Secretary has no more power to issue milk orders which he has not found will tend to effectuate the policy of the Act than he has power to issue orders whose substantive terms are not authorized by the Act. If he has not made the determination, the courts cannot supply it, for it was his to make. The actual tendency of the regulation is immaterial; it would be valid if the official whose expert opinion was required reasonably determined it would achieve a specified result; it would be invalid if he did not. The administrative conclusion is the basis of a valid regulation. The find-

ing is required because it is the expression of that determination, the proof that it has been made, and the indication that there existed the basis or "quasi-jurisdictional" facts essential to the validity of the administrative action. If the finding is lacking the action is void. Florida v. United States, 282 U. S. 194, 215; Panama Refining Co. v. Ryan, 293 U. S. 388, 433-434; United States v. Baltimore and Ohio R.R., 293 U.S. 454. Where Congress has itself adopted that philosophy and has itself expressly conditioned administrative power upon a finding, then the finding as the embodiment of the administrative decision is the statutory basis of the power. If the condition is not performed the power does not exist. Its purported exercise is a nullity. Wichita Railroad & Light Co. v. Public Utilities Comm., 260 U. S. 48; Mahler v. Eby, 264 U. S. 32, 44. Such findings must be distinguished from a mere statement of the grounds for a decision. United States v. Baltimore and Ohio R.R., 293 U. S. 454, 464. These are desirable but not indispensable. Beaumont, S. L. & W. Ry. v. United States, 282 U. S. 74, 86. They must also be distinguished from a series of expert findings on the basis of which no administrative order will issue. Virginian Ry. v. System Federation No. 40, 300 U. S. 515, 561-562. In neither of those cases is the finding essentially the actual basis of regulation.

The rule that where administrative power has been conditioned on a finding the finding must be made or the exercise of the power is void is also applicable to the section 8e finding which the statute required to be made and the Secretary did not make in connection with the issuance of the amendments to Order No. 4. The only power to use the post-war base period for the purposes of amendments, the only power to issue amendments which tended to fix prices at post-war parity was expressly conditioned by the Act upon the contemporaneous expert determina-

tion and finding that such amendments were necessary because the pre-war period could not be used. That determination and that finding characterize the amendments just as does the finding that they tend to achieve the policy of the Act. Lacking that determination, the amendments are not the kind authorized because the Secretary's expert characterization as "necessary for lack of pre-war statistics" has not been made.

The section 8e finding and proclamation have also a peculiar importance. Not only are orders without them unauthorized but even orders with them are a departure from the primary purpose of the Act to the secondary intention of fixing prices at parity with the post-war levels if it should be necessary. Had the Congress so wished it might have allowed the Secretary to cover the question of that necessity in his general finding that the amendments would tend to effectuate the policy of the Act. It did not do so. Instead it expressly conditioned the power to use the post-war period upon the Secretary's making each time he wished to use it a finding and a proclamation of the unavailability of satisfactory pre-war statistics. The purpose of that provision must have been to authorize only such use of the post-war base period as the Secretary found to be necessary while directing his mind to that specific problem and embodying his conclusion in a finding and proclamation. Absent the finding, therefore, the use is not authorized.40

[&]quot;When a statutory finding is made, the mind of the administrative officer is directed to the precise issue that the legislature desired him to consider; hence the possibility of an oversight will be minimized. The instant case furnishes a fair example. Had the Secretary re-examined the available statistics for the pre-war period when he issued the amendments to Order No. 4 with a view to making the finding and proclamation required by the Act he might not have issued them on the basis of the post-war period. Between the dates of the original order and the amendments there became available statistics showing milk prices in the New England states which were published by the

Since the amendments were based upon the post-war period and since the finding which alone under the statute would create the power to issue such amendments was not made, their issuance was unauthorized and they are void. Wichita Railroad & Light Co. v. Public Utilities Comm., 260 U. S. 48; Mahler v. Eby, 264 U. S. 32, 44; Panama Refining Co. v. Ryan, 293 U. S. 388, 433-434. Cf. Florida v. United States, 282 U. S. 194, 215; United States v. Baltimore & Ohio R.R., 293 U. S. 454. Mr. Justice Cardozo, dissenting in the Panama Refining Company case, discussed the cases just cited and then stated the principle applicable here;

"In each it was a specific requirement of the statute that the basic fact conditioning action by the administrative agency be stated in a finding and stated there expressly. If legislative power is delegated subject to a condition, it is a requirement of constitutional government that the condition be fulfilled. In default of such fulfillment, there is in truth no delegation, and hence no official action but only the vain show of it." 293 U. S. at 447-448.

Department of Agriculture with the express statement that they were prepared for use under the statute reenacted by the present Act. Whether the Secretary would have found them satisfactory cannot and need not be decided for his failure to make any finding upon them shows that he may never have considered them. And, since they show the parity price to be lower than it would be if based upon the post-war period, this neglect may have caused the prices to exceed any which may be fixed under the present Act. See footnote 34, supra, and Appendix C infra pp. 131-133.

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IV.

THE MARKET ADMINISTRATOR FAILED TO COMPLY WITH THE PROVISIONS OF THE AMENDED ORDER.

Apart from any questions as to the constitutionality of the Act or the amended Order, or as to compliance by the Secretary with the provisions of the Act, the decree of the court below is erroneous for it requires the payment of moneys which under the terms of the amended Order itself are not due. In operating the equalization pool the Market Administrator, we contend, violated the plain provisions of the amended Order. In the computations, on the basis of which he announced blended prices and determined the equalization payments due from handlers, he took into account milk which the amended Order requires to be excluded from consideration. The result was to affect in every delivery period the amount which the petitioners were required to pay and the blended prices which its producers were entitled to receive (R. Vol. II, p. 177, par. 173).

The amended Order, we shall show, applies only to milk which can legally be sold for consumption as fluid milk in the Boston market. Milk cannot legally be sold for consumption in Massachusetts unless the producer has a certificate of registration, issued under the provisions of Massachusetts statutes, certifying that his dairy farm has been inspected and found to meet the minimum sanitary requirements laid down by law. Yet in every delivery period from August 1 through December, 1937, the Market Administrator, in computing the blended price, included milk purchased for sale in Massachusetts from producers who did have such a certificate (R. Vol. II, p. 176, par. 170). The ruling of the court below that the

Market Administrator satisfactorily complied with the amended Order (R. Vol. I, 124) cannot be sustained.

A. THE AMENDED ORDER REQUIRES THAT, IN COMPUTING THE BLENDED PRICE AND THE EQUALIZATION PAYMENTS, MILK NOT PRODUCED IN ACCORDANCE WITH MASSACHUSETTS HEALTH REQUIREMENTS BE EXCLUDED.

At the very outset, the amended Order carefully defines the meaning of the terms it uses (Article I: Appendix E.) The term "producer" is there defined (Article I, par. 4) as "any person who, in conformity with the health regulations which are applicable to milk which is sold for consumption as fluid milk in the Marketing Area, produces milk and distributes, or delivers to a handler, milk of his own production". To come within the definition, therefore, two things are necessary: first, the person must produce milk and distribute or deliver it to a handler; second, that production and distribution must be in accordance with the health regulations applying to milk which is sold for consumption in the market. It is not enough that a dairy farmer produce and deliver milk. The test is: Has that milk been produced in such a way that it can be sold in the marketing area; has the farmer a product which can legally be sold? In explaining the definition, the Economic Brief, prepared by the Dairy Section of the United States Department of Agriculture and submitted at the hearing conducted by the Secretary on the proposed original Order (R. Vol. II, p. 6, par. 2, Appendix A, not printed but certified to this Court as an original exhibit), states, at pp. 101, 102: "Milk which does not meet these requirements [i.e. the health requirements applicable to milk to be sold for consumption] cannot legally be sold as milk in the Greater Boston Marketing Area, hence the handlers of such milk should not be

subject to any Proposed Marketing Agreement and Proposed Order relating to such milk." And conversely, of course, the price to be paid for milk which can legally be sold should not be affected by the competition of illegally sold milk. The question is not simply one of propriety or of discouraging violations of the law. The expense of complying with health requirements imposes a cost of from 35 to 50 cents per hundredweight upon the producer of fluid milk (R. Vol. II, p. 112, par. 55). He must install cooling equipment, clean his stables more frequently, use a specified type of pails (R. Vol. II, p. 111, par. 55). Manifestly the price he is to receive, and the amount that the handler to whom he sells is to pay, should not be affected by the milk of other producers who have not incurred these expenses by complying with the laws.

The only milk, therefore, which the amended Order purports to cover, is milk produced in conformity with the health requirements governing milk sold in the Boston market. It is only as to such milk that minimum rates are fixed and only such milk is to be included in the pool on which the blended price and equalization payments are based. Thus Article IV fixes minimum prices for Class I and Class II milk to be paid to "producers" or associations of "producers"; Article V requires each handler to report in each delivery period milk received from "producers" or handlers, or produced by the handler himself; Article VII requires the Administrator to compute the value of milk sold or used by each handler which was not purchased from other handlers-i.e., which was purchased from "producers" or produced by the handler himselfand on the basis of such values to compute a uniform blended price; and Article VIII requires each handler to pay that blended price to each "producer" from whom he purchased and to pay the difference between that price and the value of his milk to other "producers" through

the Administrator. In computing the blended price, therefore, the only milk which the Administrator can take into consideration is milk purchased from "producers" or produced by the handler himself. And that milk is defined by the amended Order as milk which has been produced in compliance with the applicable health requirements, and which can thus legally be sold in Massachusetts.

B. MILK PRODUCED ON A DAIRY FARM AS TO WHICH THERE IS NOT IN EFFECT A CERTIFICATE OF REGISTRATION ISSUED PURSUANT TO MASSACHUSETTS GENERAL LAWS, C. 94, \$\\$16A-16C, is not produced in conformity with the applicable Massachusetts health requirements.

Massachusetts has developed an elaborate and comprehensive system of protecting its citizens from unwholesome and impure milk and of assuring that the supply of milk will be produced under sanitary conditions. It first approached the problem by setting up standards of quality and wholesomeness of milk without attempting to oversee the conditions under which it was produced. Thus it established the "Massachusetts legal standard". as to the percentage of solid and butterfat content of milk, skimmed milk and cream (General Laws, Chapter 94, Section 12) and prohibited sales of milk, skimmed milk or cream below that standard (Section 20); forbade sales of adulterated or impure milk or milk from diseased or refuse-fed cows (Section 19), regulated the cleanliness of milk containers (Sections 45-48) and provided for standards for the production of "Grade A Milk" (Sections 13-14A, amended by Acts of 1933, Chapter 263, Section 1, now General Laws, Chapter 94, Sections 13-13E). Acts of 1932, Chapter 305, a new and further step was taken to regulate, not only the kind of milk sold, but to insure its purity by establishing a uniform state control

of the conditions under which it was produced. That statute (Section 1) set up a milk regulation board with the power to establish "uniform minimum requirements for the inspection of dairy farms"; provided (Section 3) for the issuance by a state officer, the director of the division of dairying and animal husbandry of the state department of agriculture, of certificates of registration for dairy farms after an inspection which indicated that such farms complied with those uniform minimum requirements; and prohibited (Section 3) the sale of milk produced on a farm which possessed no such certificate. These provisions are now contained in Sections 16A-16I of Chapter 94, and Section 42 of Chapter 6, of the General Laws (Appendix D, infra, p. 134). Section 16A of Chapter 94 provides that "no person shall sell or offer or expose for sale milk produced on a dairy farm, for use or disposal elsewhere than on such farm, unless as to such farm:a certificate of registration has been issued by the director under Section 16C and is in full force and effect." Section 16C provides that no certificate shall be issued by the director until after an inspection which clearly shows satisfactory compliance with "the uniform minimum requirements for dairy farm inspection" established by the milk regulation board under the powers conferred upon it by General Laws, Chapter 6, Section 42. Since only a relatively small percentage of the milk used in the area originates in Massachusetts (R., Vol. II, 78, 134), inspection of farms outside as well as inside Massachusetts is necessary. And such annual inspection is made annually either by the director or by inspectors of munici-

[&]quot;The only exception to the requirement for such a certificate is contained in Section 16H of the chapter, exempting farms in areas designated by the milk regulation board as qualified areas. But the board has never designated any such areas. (R. Vol. II, 178.)

pal boards of health whose report he accepts (see Economic Brief submitted at hearings on original order, pp. 82, 83; R. Vol. II, p. 6, par. 2, Appendix A, certified as original exhibit).

No matter where produced, therefore, no matter by whom distributed or sold, milk produced on a farm as to which there is no such certificate of registration is not legally entitled to be disposed of in the Commonwealth." Violation of this provision subjects the offender to fine or imprisonment (Section 16I).

In thus establishing uniform standards of inspection and insuring the farmer's compliance with those minimum sanitary requirements by making necessary the issuance and possession of a certificate, this statute sought to check at the source the possibility of impurities in milk. The Commonwealth was not content simply to forbid the sale of impure or adulterated milk. Some measure of state supervision of the conditions on the farms on which milk was produced was thought necessary. Accordingly, minimum requirements of sanitation are laid down with which all farms supplying milk to be sold in Massachusetts must comply. And the sole and exclusive test of compliance is the possession of a certificate. It is immaterial that a farm may actually be clean and sanitary. Failure to have a certificate renders the milk unsellable. As Blue Sky Laws, designed to protect the public from fraudulent securities, forbid sales without a license regardless of the value of the particular

⁴²Clearly there is no question of the power of Massachusetts to prohibit the sale within its borders of milk produced on a farm not having the required certificate. The fact that the milk is produced outside of the Commonwealth is immaterial. Mintz v. Baldwin, 289 U. S. 346. In that case a state statute prohibiting the importation of cattle into the state unless certified by the chief sanitary officer of the state of origin to be free from disease was upheld as an inspection measure, "appropriate . . . to safeguard public health."

security, so this statute, designed to insure purity in milk, requires a certificate before milk, however wholesome or clean, can be sold. It follows, therefore, that milk produced on a farm as to which no certificate of registration is in effect is plainly not produced in conformity with the health requirements applicable to milk sold in the Boston market. Such milk is no more a sellable product than sub-standard or adulterated milk. The prohibition against its sale is equally absolute and unqualified.

C. THE MARKET ADMINISTRATOR VIOLATED THE PROVISIONS OF THE AMENDED ORDER BY INCLUDING IN HIS COMPUTATIONS MILK PRODUCED BY FARMERS NOT HAVING THE REQUIRED CERTIFICATE.

In each delivery period between August 1 and December 31, 1937, the Market Administrator included in his computation of the blended price milk delivered to handlers by persons who did not have the required certificate of registration (R. Vol. II, p. 177, par. 173) and made no attempt to exclude such milk (R. Vol. II, p. 176, par. 170). As we have just shown, such milk is clearly not produced in accordance with the applicable health requirements in Massachusetts. But the Administrator apparently proceeded on the theory that, if the handler to whose country plant the milk was delivered was licensed, under the provisions of General Laws, chapter 94, section 40, by local authorities of any city or town in the marketing area to sell milk in that city or town, it became unnecessary to inquire whether the farmer had a certificate of registration, or whether in any other respects the milk complied with the health regulations. A conscious effort was made by the Administrator to exclude any milk which was delivered to a country plant from which the handler had no such license to sell milk

(R. Vol. II, p. 174, pars. 163, 164). In short, the Administrator evolved his own test as to what the health regulations were. The test he adopted, we submit, rests upon a complete misapprehension of the Massachusetts system of regulating the sale of milk and is clearly erroneous.

We have pointed out that the Commonwealth has laid down general standards as to wholesomeness and purity of milk and has supplemented these by providing for inspection of the source from which milk is derived. It has, however, also vested in local municipal authorities the power to impose limitations upon the sale of milk within their own areas. By section 43 of chapter 94 of the General Laws (Appendix D, infra, p. 134), milk cannot be sold within any town without a permit from the local board of health, and such permit may contain reasonable conditions for protecting the public health. Before the provision requiring certificates of registration from the state was adopted in 1932, the local boards of health were authorized to issue such permits after inspection, "satisfactory to them" of "the place in which and the circumstances under which such milk is produced"." But after 1932, the possession of such certificate was made a prerequisite to obtaining a local board of health permit." The local health authorities are still left with the power to issue permits subject to such further inspection as is satisfactory to them, and to any other reasonable requirements additional to the minimum laid down by the Commonwealth. Brielman v. Commissioner of Public Health, Mass. Adv. Sh. (1938) pp. 1741, 1743, 17 N. E. (2d) 187, 189: "Local boards of health retain all their powers under earlier

⁴⁸Acts of 1914, Chapter 744, Sections 1-5; Gen. Laws, Chapter 94, Section 43, prior to amendments of 1932.

[&]quot;Acts of 1932, c. 305, sec. 4, amending Gen. Laws, chapter 94, section 43.

laws and may make regulations more stringent than the general law."

In addition to these board of health permits, the statute also provides for the issuance, by the local milk inspector of a city or town, of licenses to dealers to engage in the occupation of dealing in milk in the municipality (Gen. Laws, chapter 94, section 40, quoted in R. Vol. II, 89, and printed in Appendix D, infra, p. 134) just as municipal authorities are empowered, by other statutes, to license hawkers and peddlers, hotels and inns, dance halls, or bowling alleys. As a matter of practice, municipal authorities in licensing dealers have stipulated that the dealer shall sell only milk delivered to certain of his plants which the authorities approve. (R. Vol. II, p. 89, par. 30). The municipality by this means exercises a measure of supervision over the dealer's plant in which the milk is handled as, by the board of/health permit, it attains a degree of control over the conditions under which milk is produced.

The system that the Commonwealth has set up governing the sale of milk is, therefore, twofold. General statutory requirements are established applicable to all milk sold in the state. In addition, local authorities are authorized and directed to regulate the sale of milk within their own municipality by licensing the dealer and, through the issuance of board of health permits, by licensing the actual milk sold. Under this scheme, before milk can be sold in any community, four things at least are necessary: (1) the producer must have a certificate of registration; (2) the milk must meet the general standards as to butterfat and solid content, and wholesomeness and purity laid down by the statutes: (3) the distributor must have a permit from the local board of health to sell that milk; and (4) the distributor must have a license from the local milk inspector to engage in the business of selling milk in that community. No one of these requirements is a substitute for any other. They are not alternative but supplementary, and together make up a single and comprehensive system of regulation.

The Administrator, however, looked only to see whether the last requirement-possession by the handler of a license issued under section 40 of chapter 94 was complied with. But it is perfectly evident that possession of a license to engage in the business of selling milk, in a single city or town in the area, from a certain approved plant has no tendency at all to establish that the milk distributed from that plant complies with all the applicable health requirements and that any such milk can legally be sold either in that town or anywhere else in Massachusetts. A dealer's license simply permits the holder to engage in the business of selling milk in the particular municipality granting it. It has not, and is not intended to have, any further effect. All such licenses expressly provide that the licensee is authorized "to sell, milk accordingly to law and the regulations" of the local health authorities "if the said law and regulations are complied with" (R. Vol. II, p. 89, par: 30). Possession by a dealer of a municipal license to distribute milk from certain approved plants could not possibly warrant him or his producers in disregarding all other regulations governing the sale of milk. Local authorities can no more set at naught the requirement of Section 16A of chapter 94 that all producers possess a certificate of registration, than the requirement that all milk contain a certain percentage of butterfat and solids, or the prohibition against the sale of adulterated or impure milk or milk from diseased or refuse-fed cows.

The test that the Market Administrator purported to follow in applying the definition of "producer" in the amended Order is, therefore, patently wrong. What the Order required was that milk be produced in conformity with the health regulations applicable to milk sold in the Boston area. What the Administrator did was to determine whether the handler had a municipal license to sell milk. We submit that this was not, as the court below ruled, "a practical and satisfactory compliance with the Order" (R. Vol. I, 124).

D. Administrative difficulties in complying with the provisions of the Amended Order did not warrant the Market Administrator's violation of those provisions.

It is, of course, fundamental that a subordinate administrative officer is not warranted in disregarding limitations upon his authority or duties imposed upon him because it is difficult or inconvenient to comply. The requirements imposed by law may be unwise or unworkable. But he is not therefore free to re-fashion the law to suit his own conceptions of what shall be required of him. The remedy lies in resort to the lawmaker. If changes are necessary, they must be made by the authority which created the law. In this case, the law in question is the amended Order and the only person with power to change it is the Secretary, not the Market Administrator.

The court below found that, although records were kept of the certificates of registration issued to producers under sections 16A-I of chapter 94 of the General Laws (R. Vol. II, p. 176, par. 171), it was as a practical matter impossible for the Market Administrator to determine from records and information available to him whether the milk reported by particular handlers was produced by farmers who had such certificates (R. Vol. II, pp. 176, 177, par. 171). Some handlers it appeared were selling and distributing milk produced by farmers having no such certificates (R. Vol. II, p. 177, par. 172). Accord-

ingly, the Administrator abandoned the attempt to follow the directions of the amended Order and fashioned a different test which he believed was practical.

We submit that this course was improper. If practical difficulties precluded enforcement of the amended Order according to its terms, the only appropriate step that could be taken was to change these terms. Ultimate decision as to the necessity or wisdom of provisions which may hinder administration rests, not with the Market Administrator, but with the Secretary. If actual experience in operating under the amended Order as written showed the unworkability of the scheme, the Secretary alone had power to make the required alterations. And such alterations could be made only by amending the Order in the manner provided by the statute. Neither the Market Administrator's disregard of the terms of his authority, nor acquiescence by the Secretary therein, were enough to change the terms of the amended Order.

Moreover, if any difficulty in complying with those terms existed, an opportunity to correct that difficulty was presented to the Secretary before the present litigation was initiated. The very point here at issue was raised by the present petitioners in a petition filed by them with the Secretary, under the provisions of Section 8c(15)(A) of the Act⁴⁶ on September 9, 1937, shortly after the amended Order became effective. That petition sought,

⁴⁵Section 8c(15)(A) provides: "Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thercupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law."

among other things, suspension of the order pending elimination of milk alleged not to be eligible for inclusion in the pool (R. Vol. II, p. 221, par. 240). Although hearings were held on the petitions, and evidence presented, the Secretary never rendered a decision thereon (R. Vol. II, p. 221, par. 240). Had he complied with the mandate of the statute* and passed upon the questions raised, the administrative difficulties into which the Market Administrator fell and the consequent disregard of the amended Order's provisions would never have occurred. Those provisions could then have been amended, if necessary, to prescribe a different definition of "producer". Orders in other areas have differently phrased the requirement of compliance with applicable health regulations. The Order in the New York marketing area requires simply that the milk be delivered "at a plant which is approved by any health authority" for receiving milk." . The Order in the Cincinnati, Ohio, marketing area requires production in compliance with the applicable health regulations as "ap-

^{*}Section 8c(15)(A) provides that the Secretary "shall make a ruling upon the prayer of the petition" (italics ours). Unless the Secretary complies with this provision, the handler's right to judicial review, provided for in Section 8c(15)(B), is thwarted.

[&]quot;Order Regulating Handling of Milk in the New York Metropolitan Marketing Area (3 Fed. Reg. 1945-1951), issued August 5, 1938. Article I, Section 1, provides:

[&]quot;The following terms shall have the following meanings:

^{5. &}quot;Producer" means any person who produces milk which is delivered to a handler at a plant which is approved by any health authority for the receiving of milk to be sold in the marketing area."

plied and enforced by proper authorities". And the Order, issued in February, 1939, in Lowell-Lawrence, another marketing area in Massachusetts, abandons all attempt at requiring compliance with the Massachusetts health requirements. Doubtless profiting from the experience of the Market Administrator under the instant amended Order, the Secretary has attempted to avoid similar difficulties of enforcement in other markets. But he has taken no action to change the plain command of the Amended Order here under consideration. The law as there written still stands. And the Administrator's failure to follow that command was, we submit, unjustified.

E. THE DECREE ORDERING PAYMENT OF IMPROPERLY COM-PUTED SUMS IS ERRONEOUS.

The Market Administrator's failure to comply with the provisions of the amended Order affected the blended

⁴⁸Order Regulating Handling of Milk in Cincinnati, Ohio, Market Area (3 Fed. Reg. 969-973), issued April 27, 1938, effective May 1, 1938, Article I, Sec. 1 provides:

[&]quot;The following terms shall have the following definitions:

^{4.} Producer means any person, who, in conformity with the health regulations as applied and enforced by the proper authorities, with respect to milk which is sold for consumption in the form of milk in the marketing area, produces milk and delivers it to a handler "

^{**}Order Regulating the Handling of Milk in the Lowell-Lawrence, Massachusetts, Marketing Area (4 Fed. Reg. 601-606), issued February 6, 1939, effective February 12, 1939. Sec. 934.1 thereof provides:

[&]quot;The following terms shall have the following meanings:

⁽⁵⁾ The term "producer" means any person who produces milk which is delivered to a receiving plant from which milk is shipped to or sold in the marketing area during any delivery period. "

price in every delivery period (R. Vol. II, p. 177, par. 173). In such periods, therefore, no producer received payment of the correct amount for his milk. And, consequently, no handler was billed the correct amount for equalization charges. For such charges vary in accordance with the changes in the blended price. If the blended price is increased, the equalization charges are lower (R. Vol. II, p. 194, par. 190). If it is decreased, they are correspondingly raised. The extent of the error has not been found; presumably it was great because the amount of milk wrongly included in the computations was substantial (R. Vol. II, p. 177, par. 172).

Yet it is these incorrectly computed amounts which the decree of the court below orders paid over to the Administrator. It follows that that decree is wrong. Of course, it will not do to say that, as in some instances the bills were too high and in others too low, the net effect of the errors may not have harmed the petitioners. That is purely a matter of conjecture. The burden is upon those who seek to compel payment to show what is owing. If the evidence establishes merely that some amount of money may or may not be due, the plaintiff has not made out his case.

The respondents sought to escape this obvious conclusion by suggesting in the court below that the petitioners, Hood and Noble, had no legal standing to raise questions as to errors in computation of the equalization payments (Plaintiffs' Proposed Conclusions of Law, No. 33, R. Vol. I, p. 85). They point out that those payments do not affect the handler's total financial obligation (R. Vol. II, p. 194, par. 191), because he must in any event pay the "value" of his milk—i.e. a sum based on the amount of his purchases multiplied by the Class I and Class II rates. Since he must always pay this total amount, it is said that he suffers no legal injury, whether

the Administrator's share of that amount is greater or less than it should be. But the Administrator has no right or title to any monies except equalization payments correctly computed under Article VIII, section 2, paragraph 3 of the amended Order. The Administrator has not proved his own claim to these sums. Nor can he recover in the right of Hood producers since, under the terms of the decree and of the amended Order, the equalization payments transferred to him are distributed not to those producers but to other handlers.

The error, moreover, cuts deeper. By the decree ordering payment of these miscomputed sums to the Administrator, not only are the handler petitioners compelled to pay money to one who is not entitled to it, but also the petitioner Branon, and the producers he represents, are deprived of their right under the order to be paid a blended price computed in accordance with the order. Some of the amounts ordered transferred to the Administrator may be due to them.

No question is involved here of the right of a handler to refuse to comply with a milk order entirely, simply because the Administrator has made incorrect mathematical computations. The vice in the administration here is fundamental. The delivery periods involved are past. The decree below forecloses forever the right of the handler petitioners to be relieved from payments not due to the Administrator and the right of the producer to be paid the correct blended price in accordance with the Order.

CONCLUSION

The decree of the District Court should be reversed.

Respectfully submitted,

CHARLES B. Rugg, Counsel for H. P. Hood & Sons, Inc. and Noble's Milk Company.

Edward F. Merrill, Counsel for E. Frank Branon.

WARREN F. F'ARR H. BRIAN HOLLAND ARCHIBALD COX EDWARD B. HANIFY

April, 1939

APPENDIX A

A monthly average of NEMPA composite prices during the post-war parity period, computed from the tabulation in R. Vol. II, pp. 103-109, is taken as representing the normal seasonal variation in prices to producers. An index of the normal seasonal variation of the price for each month from the price for August is determined by dividing the August price by the price for each month. Prices actually posted and paid by Hood during the first seven months of 1937 are taken from the plant notices (with the interpolation of a price for February) in R. Vol. III, pp. 210-215. The adjusted prices posted and paid are computed by applying the index of normal seasonal variation for each month to the actual price for that month. These statistics are summarized in the table below:

Month	Composite Price Base Period	Index Normal Seasonal Variation	Price Posted and Paid	Adjusted Price Posted and Paid
Jan.	\$2.825	.967	\$2.20	\$2.127
Feb.	2.712	1.007	2.20	2.215
Mar.	2.609	1.047	2.10	2.199
Apr.	2.404	1.136	2.00	2.272
May .	2.236	1.221	1.85	2.259
June	2.142	1.275	1.81	2.308
July	2.425	1.126	2.26	2.545
Aug.	2.731			

Average adjusted price \$2,275

APPENDIX B

Section 8c(5)(F) provides that nothing in subsection (5) is intended or shall be construed to prevent a cooperative marketing association, qualified under the provisions of the "Capper-Volstead Act" and engaged in making collective sales or marketing of milk for the producer members thereof, from blending the net proceeds of all its sales in all markets, in all use classifications and making distribution thereof to its producers in accordance with the contract between the association and its producers.

The practical effect of this subparagraph (F) may be illustrated by a simple example. Assume an operating cooperative, such as Milton Cooperative, New England Dairies, Inc., United Farmers or others (R. Vol. II, pp. 112, 114), that is qualified under the provisions of the "Capper-Volstead Act" (R. Vol. II, p. 153, par. 118). It sells fluid milk either to handlers or at retail in competition with handlers. In so far as the cooperative sells to handlers it must sell at prices not less than those fixed pursuant to paragraph (A) of 8c(5). Under amended Order No. 4 generally this is the Class I price. In so far as it sells fluid milk at retail all such sales are classified as Class I sales under the amended Order. These classifications are made pursuant to the authority vested in the Secretary by 8c(5)(A). Thus the assumed co-

⁵⁰8c(5)(F) "Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk."

⁵¹Appendix F, amended Order No. 4 Art. III, Sec. 2.

⁵² Appendix F, Art. III, Sec. 1.

of the following terms . . . (A) Classifying milk in accordance with the form in which or the purpose for which it is used "

operative might well dispose of the bulk of its milk for Class I purposes, manufacturing the balance. The average of its Class I outlet might be in excess of the market average.

Except for the provisions in subparagraph (F) of section 8c(5), this cooperative would, like any other handler, and into the equalization pool under the provisions of subparagraph (C). It would pay the blended price to each member producer for the milk delivered by him, and since the average value of all of the milk received classified by its use at the fixed prices is in excess of the blended price, it would pay the difference between the total payments to the producers and the total value to the Market Administrator.

Thus, under the procedure outlined in subparagraphs (A), (B) and (C) of Sec. 8c(5), and as applied in amended Order No. 4, handlers whose use value of milk received is greater than the average use value in the entire market are not permitted to retain the net proceeds of all their sales. The equalization payment to the Market Administrator is from the net proceeds and diminishes them to that extent.⁵⁷

To relieve qualified cooperatives from the burden of this obligation, subparagraph (F) specifically directs that nothing in Section 8c(5) is intended or shall be construed to prevent a cooperative from blending the net proceeds of all its sales and making distribution thereof to its

⁸⁴ Art. 1, Sec. 1, Cl. 6.

⁵⁵ Art. IV, Secs. 1, 2 and 3.

⁵⁶Art. VIII, Sec. 1.

This may involve substantial amounts. Thus the Hood Company alone in seventeen months was obligated to pay \$1,412,280.83 to the Market Administrator (R. Vol. I, p. 131). This, if the Hood Company were a cooperative, would have been distributed among its 3,186 farmers (R. Vol. II, p. 212), amounting approximately on the average to \$445 per farmer.

members. "Net proceeds of all its sales" means the aggregate received for the sale of the milk less the costs of marketing, processing, etc. Any other construction would require an interpretation of subparagraph (F) as follows: "... net proceeds of all its sales ... subject to such adjustments as may be required by subparagraph (C) of this section". Obviously such an interpretation would defeat the plain meaning of the words of subparagraph (F) and in effect render it a vain and meaningless provision.

This construction is confirmed by the legislative history. The Committees on Agriculture in both houses of Congress in commenting on this subparagraph said,

"A specific provision is included in this proposed subsection safeguarding the right of cooperative marketing associations qualified under the Capper-Volstead Act to make distribution of the proceeds of milk sold by them to their members in accordance with the contracts between the cooperatives and their members." 74th Congress, House of Representatives, Report No. 1241, Senate Report No. 1011.

During the debate in the Senate the future status of cooperatives was discussed. Senator Murphy of Iowa, in charge of the milk sections of the bill for the committee, in response to a question by Senator Copeland as to whether, under the provisions of Section 8c(5), a cooperative might "return to their members the net proceeds of their sales regardless of what they may be," said,

"Furthermore, in the case of the particular producers to whom the Senator refers, there is not any obligation upon them to come in under this provision at all: They are free to stay out. If they do not wish to come in and have their condition bettered, and a proper price paid them for their milk, this is a matter

of their election. It will not be imposed upon them." Cong. Rec. 74th Cong. 1st Sess. p. 11139.

Thus, the effect of this provision is to make it optional with the qualified cooperatives to join marketwide equalization as established under amended Order No. 4 or not. Even subparagraph C of Section 8c(5) would not, standing alone, require a cooperative to equalize for this section refers only to milk purchased. Cooperatives do not purchase milk. They act as the marketing agent of their members (see sample contracts between cooperatives and their members, R. Vol. III, pp. 2-48).

This favored treatment of cooperatives is consistent with a long-established policy of Congress and state legislatures in varied efforts to solve the national agricultural problem. The cooperative movement has been fostered as a system of establishing orderly marketing conditions and prices for agricultural commodities. The system has so developed as to merit recognition. The method of regulating prices established in the challenged legislation although novel was obviously designed to supplement and protect the advantages previously achieved through the cooperative movement. Scrupulous effort was made to preserve and in no way interrupt the successful accomplishment of cooperatives.

sortaining the sections here discussed said: "The operations of cooperative marketing associations will be reinforced by these sections, which will assure the cooperation of processors and distributors in programs intended to raise farm prices" (74th Cong. 1st Sess. Senate Report No. 1011). See also 74th Cong. 1st Sess. H. R. Report No. 1241.

APPENDIX C

Between the promulgation of Order No. 4 and the promulgation of the amendments to Order No. 4 the Department of Agriculture in February 1937 published a pamphlet entitled "Wholesale Prices Received by Farmers for Whole Milk 1909-1936". The preface states that the statistics were compiled from field investigations lasting until August 1936, that the earlier series were inadequate and that this series was constructed "for use in developing marketing agreements". (R. Vol. II, p. 207, par. 216; Exh. 18, R. Vol. II, pp. 201-209).

It is impossible to say whether the Secretary would have considered these statistics satisfactory. The compelling inference from his failure to make under Sections 8c(17) and 8e the required finding and proclamation concerning pre-war statistics at the time of the amendments to Order No. 4, is that he never considered them. We do not contend that he would have been compelled to find them satisfactory. But in view of their announced purpose he might well have considered them to be so.

If the Secretary had found these statistics satisfactory, he could have then made the following calculations from them. From the pre-war prices for each state, averages would be computed. They are:

State	Pre-War Average
Maine	\$1.80
New Hampshire	1.95
Vermont	1.49
Massachusetts	2.46

To calculate the parity price for August, 1937 for each state we adopt from the statistics used by the Secretary the percentage increase in the national index number of articles bought by farmers. (R. Vol. I, p. 207, par. 215; Exh. 16, R. Vol. II, pp. 162-163). The index number

rose 32%; consequently the parity price for each state would be:

State .	August 1937 parity
Maine	.\$2.376
New Hampshire	2.574
Vermont	1.967
Massachusetts	3.247

Since the order fixes prices in relation to the milkshed as a whole, an average for the milkshed could be calculated by weighting the state parity prices according to the present state participation in the Boston market. (R. Vol. I, p. 78). This method of weighting would lead to a parity price equal to the average sum per hundred-weight which would be paid if farmers in each state received a parity price for that state. It would give \$2.25 as the uniform parity price for whole milk. A similar series of computations from the same statistics would show that the parity price based on the post-war level is seven cents higher, or \$2.32.

We do not contend that the Secretary should have used those pre-war figures for parity computations. He might have found them unsatisfactory. However, he had already used whole-milk prices for the purpose of fixing the class price in the Boston area. Furthermore, the whole-milk prices here referred to were compiled for the express purpose of formulating marketing agreements, which always accompany orders issued under the Act. It would have been possible and not unreasonable, therefore, for the Secretary to have used an average parity price computed from these pre-war figures as the price

The Secretary used the pre-war base period for the purposes of an earlier license regulating the handling of milk n the Boston area, (R. Vol. II, pp. 207-209, par. 218). Milk was not sold under the classified price system at that time, (R. Vol. II, p. 123, par. 78), yet the license fixed class prices.

goal toward which he would mold the provisions of an order. Consequently, the failure to make the required Section 8e finding and proclamation indicates that the Secretary overlooked statistics for the pre-war period which he could have found satisfactory, and which in that event he would have been compelled to use.

APPENDIX D

Mass. Gen. Laws (Ter. Ed. 1932), Chapter 6.

642. Milk Regulation Board. There shall be a milk regulation board, consisting of the commissioner of agriculture, the commissioner of public health and the attorney general, ex-officiis. Said board, after holding a public hearing in the commonwealth, notice of which shall have been given, at least two weeks prior to the date of the hearing, by publication in each county in a newspaper of general circulation therein, shall establish and promulgate, and may from time to time amend, modify, repeal or suspend, rules and regulations, including uniform minimum requirements, for the inspection of dairy farms producing milk for distribution, sale or exchange in the commonwealth. Said board shall provide suitable uniform cards for the classification of dairy farms producing milk for said purposes, and shall furnish suitable plans, information and advice relative to the construction, installation and development of facilities for improving the quality of milk.

Mass. Gen. Laws (Ter. Ed. 1932), Chapter 94.

§16. Definitions. For the purposes of sections sixteen to sixteen I, inclusive, the following words shall have the following meanings:

"Board", the milk regulation board, established under section forty-two of chapter six.

"Dairy farm", a place or premises where more than two cows are kept and a part or all the milk produced thereon is sold or delivered for sale to any person.

"Director", the director of the division of dairying and animal husbandry of the department of agriculture.

For the purposes of sections sixteen to sixteen I, inclusive, the director shall act under the supervision and control of the board. Said sections shall not apply to cream complying with the proper Massachusetts legal standard for cream established by section twelve.

§16A. Milk Not to Be Sold without Certificate of Registration. Except as provided in section sixteen H, no person shall sell or offer or expose for sale milk produced on a dairy farm, for use or disposal elsewhere than on such farm, unless as to such farm a certificate of registration has been issued by the director under section sixteen C and is in full force and effect; provided, that one who purchases such milk from a dealer registered under section sixteen F and sells or offers or exposes the same for sale shall not be deemed to have violated this section unless he knows or has reasonable ground to know that the same was not produced on a farm as to which such a certificate has been issued.

§16B. Applications for Registration. Applications for the registration of dairy farms under section sixteen C shall be made upon blanks furnished by the director and shall contain, in addition to such other information as may be required by the director, a statement of the name, place of residence and business address of the applicant, the amount of milk produced on his dairy farm during the calendar month last preceding the date of application, the number of dairy cows more than two years of age and the number of heifers less than two years of age kept on said dairy farm during said month, the names and business addresses of dealers, distributors and wholesale purchasers who receive milk from said dairy farm, together with a statement of the estimated amount of milk to be supplied each dealer, distributor and wholesale purchaser during such period as may be

designated by the director. Every statement shall be verified by oath or written declaration that it is made under the penalties of perjury.

\$16C. Issuance and Renewal of Certificates. The director may issue, and may from time to time renew, certificates of registration for dairy farms. No certificate of registration for a dairy farm shall be issued or renewed by the director, except as hereinafter provided, until he has made or caused to be made at least one inspection of said farm within one year prior thereto. and unless said inspection clearly indicates a satisfáctory compliance with the uniform minimum requirements for dairy farm inspection established under section fortytwo of chapter six. The director shall accept the inspection reports of milk inspectors and agents of local boards of health within the commonwealth in respect to dairy farms located within or without the commonwealth which have been inspected by them, and, if such reports state that such dairy farms have complied with said minimum requirements, certificates of registration shall thereupon issue. Each dairy farm registered by the director shall receive a numbered certificate of registration which shall, while in effect, be posted in a conspicuous place at all times on said farm. Each certificate of registration of a dairy farm located in the commonwealth shall expire on the following June thirtieth, and each certificate of registration of a dairy farm located outside the commonwealth shall expire on such date as the board shall determine, but not within one year from its date of issue. Annual applications for renewal of certificates shall be made not less than thirty days prior to the expiration date on forms furnished by the director. If a certificate of registration is lost, duplicate copies may be obtained from the director. at a cost of fifty cents each.

§16D. Refusal, Revocation or Suspension of Certificate. A certificate of registration of a dairy farm may be refused, suspended or revoked by the director for failure to comply with such rules, regulations and uniform minimum requirements; provided, that before any . such suspension or revocation becomes effective, or upon such refusal, the parties concerned shall be given a hearing before the director or a person designated by him for such purpose. The parties concerned shall be given a reasonable notice of the hearing, specifying the day, hour and place thereof and accompanied by a statement of the alleged failure to comply, or the reasons for such refusal. The director may allow the parties concerned a period of not more than thirty days from the date of the hearing within which to make a substantial compliance with said rules, regulations and uniform minimum requirements. An appeal from the decision of the director may be taken to the board, whose decision shall be final. Notice of the refusal, suspension or revocation of a certificate of registration shall be given to each distributor or dealer of record handling milk produced on such dairy farm, and to the board of health of each town of record where milk produced on such dairy farm is sold, offered or exposed for sale. In case of emergency, the department of public health may suspend or revoke any such certificate of registration.

\$16H. Areas for Milk Supply. The board shall designate, as qualified areas for additional milk supply, states, or parts thereof, wherein milk is produced on dairy farms subject to inspection substantially similar to that required by the board in this commonwealth and whose geographical location will reasonably guarantee the delivery of milk of a satisfactory quality for the Massachusetts market. Dairy farms in said states, or parts there-

of, shall thereupon be deemed to be registered within the meaning of sections sixteen to sixteen I, inclusive, and shall be entitled to certificates of registration without further inspection: provided, that no such certificate shall be granted for such a dairy farm if, upon inspec-. tion, the director shall deem that satisfactory compliance with the Massachusetts uniform minimum requirements for dairy farm inspection does not exist thereat. Any producer of milk within any state or part thereof, not designated as a qualified area as aforesaid, shall, within a period of one year after his application therefor, be entitled to have his dairy farm inspected by the director, or by an agency designated by the director, and shall not be refused a certificate of registration for any reason other than failure to comply with said Massachusetts uniform minimum requirements or inability for geographical reasons to deliver milk of a satisfactory quality in the Massachusetts market. If, at any time, the board finds that a shortage of milk exists or is threatened anywhere within the commonwealth, temporary certificates of registration shall, without inspection, be. issued for non-registered dairy farms in such numbers and in such areas as the board may deem wise, and any such certificate may be revoked by the board.

§16I. Penalty for Violation. Any person violating any provision of sections sixteen to sixteen F, inclusive, shall for the first offence be punished by a fine of not more than one hundred dollars; and for any subsequent offence shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for not more than three months, or both.

Mass. Acts of 1914, Chapter 744.

SECTION 1. It shall be unlawful for any producer of milk or dealer in milk to sell or deliver for sale in any

city or town in the commonwealth any milk produced or dealt in by him without first obtaining from the board of health of such city or town a permit authorizing such sale or delivery. Said boards of health are hereby authorized to issue such permits after an inspection, satisfactory to them, of the place in which and of the circumstances under which such milk is produced, has been made by them or by their authorized agent. Any permit so granted may contain such reasonable conditions as said board may think suitable for protecting the public health and may be revoked for failure to comply with any of such conditions. No charge shall be made to the producer for the permit or for the inspection of the dairy where the milk is produced.

Mass. Acts of 1932, Chapter 305.

Section 4. Said chapter ninety-four, as amended in section forty-three by chapter one hundred and twentytwo of the acts of nineteen hundred and twenty-four, is hereby further amended by striking out said section and inserting in place thereof the following:-Section 43. No producer of milk shall sell or deliver for sale in any town any milk produced or dealt in by him without first obtaining from the board of health of such town a permit authorizing such sale or delivery. Said board of health may issue such permit after an inspection of the milk, and of the place where and the circumstances under which it is produced and handled, has been made by it or its authorized agent, but no producer shall be entitled to such a permit unless, as to the dairy farm producing such milk, a certificate of registration has been issued by the director under section sixteen C and is in full force and effect; provided, that no such certificate shall be required for the production or sale of cream complying with the proper legal standard for cream established by section twelve or milk produced elsewhere than at a dairy farm, as defined in section sixteen.

Section 5. Notwithstanding the provisions of this act, any person who, upon its effective date, was producing milk for sale or distribution within the commonwealth, under a permit issued by a local board of health in the commonwealth, may continue to supply such milk for sale or distribution during a period not to exceed eighteen months from said effective date pending the issuance or refusal to issue a certificate of registra in by the director of the division of dairying and animal husbandry of the department of agriculture under section sixteen C of chapter ninety-four of the General Laws, inserted by section three of this act, unless said permit is sooner revoked as provided by law.

Mass. Gen. Laws (Ter. Ed. 1932), Chapter, 94.

§40. License to Sell Milk, etc. No person, except a producer selling milk to other than consumers, or selling not more than twenty quarts per day to consumers, shall deliver, exchange, expose for sale or sell or have in his custody or possession with intent so to do any milk, skimmed milk or cream in any town where an inspector of milk is appointed, without obtaining from such inspector a license which shall contain the number thereof, the name, place of business, residence, number of vehicles used by the licensee and the name of each driver or other person employed by him in carrying or selling milk. A license issued to a partnership or corporation shall be issued in the business name of said partnership or corporation and shall contain the names in full of the partners and managers of said partnership or officers of said corporation. The license shall, for the purposes of sections forty to forty-two, inclusive, be conclusive evidence

of ownership and shall not be sold, assigned or transferred. Whoever in such a town, engages in the business of selling milk, skimmed milk or cream from any vehicle shall display conspicuously on the outer side of each vehicle so used, his license number in figures not less than one and one half inches in height, and the name and place of business of the licensee in gothic letters not less than one and one half inches in height. Whoever in such town engages in the business of selling milk, skimmed milk or cream in a store, booth, stand or market shall have his license conspicuously posted therein.

§43. Permits for Sale, etc., of Milk; Penalty. producer of milk shall sell or deliver for sale in any town any milk produced or dealt in by him without first obtaining from the board of health of such town a permit authorizing such sale or delivery. Said board of health may issue such permit after an inspection of the milk, and of the place where and the circumstances under which it is produced and handled, has been made by it or its authorized agent, but no producer shall be entitled to such a permit unless, as to the dairy farm producing such milk, a certificate of registration has been issued by the director under section sixteen C and is in full force and effect; provided, that no such certificate shall be required for the production or sale of cream complying with the proper legal standard for cream established by section twelve or milk produced elsewhere than at a dairy farm, as defined in section sixteen.

Any permit so granted may contain such reasonable conditions as said board deemed suitable for protecting the public health, and may be revoked for failure to comply with any of such conditions. After a permit has been revoked, it may be reissued in the same manner in which the original permit was issued. The board revoking or re-

issuing said permit shall immediately send notice thereof to the department of public health, which may enforce this provision. The department shall at once inform the board of health of any other town where, in its judgment, milk produced by the person to whom the permit relates would be likely to be sold or delivered for sale, and it shall also give notice of such revocation or reissue to any dealer in milk who in its judgment would be likely to purchase milk from such person; and after receipt of notice of revocation no dealer so notified shall sell or offer for sale such milk. If the board of health of any town refuses to issue a permit under this section or a permit previously issued is revoked by it, an appeal may be taken to the said department, whose decision shall be final. tion of any provision of this section shall be punished by a fine of not more than one hundred dollars.

appendix E

UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL ADJUSTMENT ADMINISTRATION

Division of Marketing and Marketing Agreements

ANNOTATED COMPILATION

OF

AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

REENACTING, AMENDING, AND SUPPLEMENTING THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1927

PREFATORY NOTE

This compilation is intended to indicate the present status of legislation by Congress relating to marketing agreements and orders regulating the handling of agricultural commodities in interstate and foreign commerce. The Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public, No. 137—75th Congress—Chap. 296, 1st Session), reenacted and amended certain provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders. Related legislation enacted prior to June 3, 1937, is given in the compilation known as "Annotated Compilation of the Agricultural Adjustment Act, as Amended, and Acts Relating Thereto at the Close of the First Session of the Seventy-Fourth Congress, August 26, 1935"; Superintendent of Documents, Washington, D. C.

Throughout the text of this compilation, bold face type is used for the language of the Agricultural Marketing Agreement Act of 1937; light face type is used for the language of the Agricultural Adjustment Act, as amended, as reenacted by the Agricultural Marketing Agreement Act of 1937; italics are used for amendments made by section 2 of the Agricultural Marketing Agreement Act of 1937 to

the Agricultural Adjustment Act, as amended.

The provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are not set out have verba. They are, however, incorporated in the body of the provisions of the Agricultural Adjustment Act, as amended, which they amend. References to the amendatory provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are contained in the annotations.

ANNOTATED COMPILATION OF AGRICULTURAL MARKETING AGREEMENT ACT OF 1937 REENACTING, AMENDING AND SUPPLEMENTING THE AGRICULTURAL ADJUSTMENT ACT. AS AMENDED 1

AN ACT

To reenact and amend provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the following provisions of the Agricultural Adjustment Act, as amended, not having been intended for the control of the production of agricultural commodities, and having been intended to be effective irrespective of the validity of any other provision of that act are expressly affirmed and validated, and are reenacted without change except as provided in section 2:

(a) Section 1 (relating to the declaration of emergency);

DECLARATION

It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.2

(b) Section 2 (relating to declaration of policy);

DECLARATION OF POLICY

Sec. 2. It is hereby declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish a prices to farmers at a level that will give agricultural commodities a purchasing power with respect

"DECLARATION OF EMERGENCY

"That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act."

The italicized words were substituted, by sec. 2 (b) of the Agricultural Marketing

of title I of this Act."

The italicized words were substituted, by sec. 2 (b) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will resemblish."

¹ For annotations to the Agricultural Adjustment Act, as amended; for provisions of that act not reenacted by the provisions of the Agricultural Marketing Agreement Act of 1937; and for other acts of Congress relating both to the Agricultural Adjustment Act, as amended, and to the Agricultural Marketing Agreement Act of 1937 see "Annotated Compilation of Agricultural Adjustment Act as Amended and Acts Relating Thereto at the Close of the First Session of the 74th Congress, August 26, 1935"; Superintendent of Documents, Washington, D. C.

² As amended by sec. 2 (a) of 'ne Agricultural Marketing Agreement Act of 1937. The text of sec. 1 of the Agricultural Adjustment Act, as amended, was as follows: Documents.

to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and post-toes shall be the pre-war period, August 1909—July 1914. In the case of tobacco and potatoes, the base period shall be the postwar period, August 1919—July 1929.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic, and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this

section.

(c) Section 8a (5), (6), (7), (8), and (9) relating to violations and enforcement;

SEC. 8a(5) Any person willfully exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture, and any other person knowingly participating, or aiding in the exceeding of said quota or allotment, shall forfeit to the United States a sum equal to three times the current market value of such excess, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.

in any proceeding now pending or hereafter brought in said courts. (7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or

in equity.

^{*}The following was deleted by section 2 (c) of the Agricultural Marketing Agreement Act of 1937: ", the provisions of this section, or of".

and the fresh design and the very

(9) The term "person" as used in this title includes an individual, partnership, corporation, association, and any other business unit.

(d) Section 8b (relating to marketing agreements);

SEC. 8b. In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, afte: due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: Provided, That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements. .

(e) Section 8c (relating to orders);

ORDERS

Src. 8c. (1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

COMMODITIES TO WHICH APPLICABLE

(2) Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores), or to any regional, or market classification of any such commodity or product: Milk, fruits (including perans and walnuts but not including apples and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning) soybeans and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin).

NOTICE AND HEARING

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

FINDING AND ISSUANCE OF ORDER

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

TERMS-MILK AND ITS PRODUCTS

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) evolume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: Provided That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by

the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered. (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk during a representative period of time.

⁵ The word "production" was deleted and the word "marketings" was substituted by section 2 (d) of the Agricultural Marketing Agreement Act of 1937.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the

prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefore from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for

milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act", engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: *Provided*, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manuer limit, in the case of the products of milk, the marketing in that area of any milk or product thereof_produced in any production area in the

United States.

TERMS-OTHER COMMODITIES

(6) In the case of fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning) and their products, tobacco and its products, vegetables (not including vegetables, other than asparagus, for canning) and their products, soybeans and their products, and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin); orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size,

or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof,

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period or periods, under a uniform rule based upon the amounts of sold by such producers in such prior period as the Secretary determines to be representative, or upon the current quantities available for sale by such producers, or both, to the end that the total quantity thereof to be purchased or handled during any specified period or periods shall be

apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extended the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers and handlers

thereof.

(E) Establishing, or providing for the establishment of reserve pools of any such commodity of product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

TERMS COMMON TO ALL ORDERS

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade

practices in the handling thereof.

The words "produced or" were deleted by section 2 (e) of the Agricultural Marketing Agreement Act of 1937.
The italicized words were substituted, by section 2 (e) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "production or sales of".

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining

their powers and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions:

(ii) To make rules and regulations to effectuate the terms and

provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amend-

ments to such order.

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of section 10 (g) of this title, unless such person receives compensation for his personal services from funds of the

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to effectuate the other provisions of such order.

ORDERS WITH MARKETING AGREEMENT

(8) Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement. entered into pursuant to section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection (8) shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: Provided. That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of

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such commodity for sale in the marketing area specified in such

marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

ORDERS WITH OR WITHOUT MARKETING AGREEMENT

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:

determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding

cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation, of the declared policy of this title with respect to such commodity or product and

policy of this title with respect to such commodity or product, and (B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursu-

ant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such

commodity sold within the marketing area specified in such marketing agreement or order.

MANNER OF REGULATION AND APPLICABILITY

(10) No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be issued under this title prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement.

REGIONAL APPLICATION

(11) (A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional production areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently

with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

COOPERATIVE ASSOCIATION REPRESENTATION

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

RETAILER AND PRODUCER EXEMPTION

(13) (A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

VIOLATION OF ORDER

(14) Any handler subject to an order issued under this section, or any officer director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than \$50 or more than \$500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, That if the court finds that a petition p rsuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15).

PETITION BY HANDLER AND REVIEW

(15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall

be final, if in accordance with law.

(B) The District Courts of the United States (including the Supreme Court of the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business. are hereby vested with jurisdiction in equity to review such ruling. provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

TERMINATION OF ORDERS AND MARKETING AGREEMENTS

(16) (A) The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(B) The retary shall terminate any marketing agreement entered in the section 8b, or order issued under this section, at the end of the securrent marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specihed in such marketing agreement or order, or who, during such repfesentative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: Provided, That such majority have, during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) The termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within

the meaning of this section.

PROVISIONS APPLICABLE TO AMENDMENTS

(17) The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.

Milk Prices

(18) The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain, in accordance with section 2 and section 8e, the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period. The level of prices which it is declared to be the policy of Congress to establish in section 2 and section 8e shall, for the purposes of such agreement, order, or amendment, be such level as will the the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand, for milk or its products in the marketing area to which the contemplated mar-

keting agreement, order, or amendment relates. Whenever the Sec. retary finds, upon the basis of the evidence adduced at the hearing required by section 8b or 8c, as the case may be; that the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period as determined pursuant to section 2 and section 8e are not reasonable in view of the price of jeeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, making adjustments in such prices.

PRODUCER REFERENDUM

(19) For the purpose of ascertaining whether the issuance of an order is approved or favored by producers, as required under the applicable provisions of this title, the Secretary may conduct a referendum among producers. The requirements of approval or favor under any such provision shall be held to be complied with if; of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. Nothing in this subsection shall be construed as limiting representation by cooperative associations as provided in subsection (12).9

(f) Section 8d (relating to books and records);

BOOKS AND RECORDS

Sec. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, to furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried outlor has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the antitrust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports. accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or

ment Act of 1937.

This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agree ment Act of 1937.

**This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agree

such handler or (3) of any subsidiary of any such party, handler,

or person.

(2) Notwithstanding the previsions of section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

(g) Section 8e (relating to determination of base period);

DETERMINATION OF BASE PERIOD

Sec. Se. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period. August 1919–July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.

(h) Section 10 (a), (b) (2), (c), (f), (g), (h), and (i) (miscellaneous provisions);

MISCELLANEOUS

Sec. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations: Provided, That no salary in excess of \$10,000 per amount shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title: And provided

further, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropri-

ations contained in this Act. (b) (2) 10 Each order issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or accoun' of persons other than handlers subject to such order. The pro rata share of the expenses pavable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. eral District Courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title. Any violation of any regulation shall be subject to such

penalty, not in excess of \$100, as may be provided therein.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; except that, in the case of sugar beets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam.¹²

(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly in any agricultural commodity or product thereof, to which the sule applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling.

No. 10 (b) (2) of the Agricultural Adjustment Act, as amended.
No. 2 (g) of the Agricultural Marketing Agreement Act of 1927 deletes the following:
No. 10 (d) of the Agricultural Marketing Agreement Act of 1927 deletes the following:
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No. 10 (d) of the Agricultural Adjustment Act, as amended.
No. 11 (d) of the Agricultural Adjustment Act, as amended.
No. 12 (d) of the Agricultural Adjustment Act, as amended.
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respect thereto.

12 Sec. 2 (h) of the Agricultural Marketing Agreement Act of 1937 deletes the sentence:

"The President is authorized to attach by Executive order any or all such possessions to any internal-revenue collection district for the purpose of carrying out the provisions of this title with respect to the collection of taxes."

processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than \$10,000 or imprisoned not more than two years, or both

both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to any person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States

without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: Provided, That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory prisdiction of such authorities, and then only upon a written agreement by such authorities that the information so, furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof.

(j) The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this Act (but in nowise limiting the foregoing definition) a marketing transaction in respect an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within

the State and the shipment outside the State of the products so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. As used herein, the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nations.\(^{13}\)

(i) Section 12 (a) and (c) (relating to appropriation and expense);

APPROPRIATION

Sec. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for payments authorized to be made under section 8. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions ¹⁴ with respect to the dairy and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the market for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$200,000,000: Provided, That not more than 60 per centum of such amount shall be used for either of such industries.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.

(j) Section 14 (relating to separability);

SEPARABILITY OF PROVISIONS

SEC. 14. If any provisions of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

(k) Section 22 (relating to imports);

IMPORTS

Sec. 22. (a) Whenever the President has reason to believe that any one or more articles are being imported into the United States

¹³ This its 'leized subsection was added by sec. 2 (i) of the Agricultural Marketing Agreement Act of 1937.

14 Sec. 2 (j) of the Agricultural Marketing Agreement Act of 1937 deletes the words: "and production adjustments".

under such conditions and in sufficient quantities as to render or tend to render ineffective or materially interfere with any program or operation undertaken, or to reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title, or the Soil Conservation and Domestic Allotment Act, as amended, he shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties and shall be conducted subject to such regulations

as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such limitations on the total quantities of any article or articles which may be imported as he finds and declares shown by such investigation to be necessary to prescribe in order that the entry of such article or articles will not render or tend to render ineffective or materially interfere with any program or operation undertaken, or will not reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title or the Soil Conservation and Domestic Allotment Act, as amended: Provided, That no limitation shall be imposed on the total quantity of any article which may be imported from any country which reduces such permissible total quantity to less than 50 per centum of the average annual quantity of such article which was imported from such country during the period from July 1, 1928, to June 30, 1933, both dates inclusive.

(c) No import restriction proclaimed by the President under this section nor any revocation, suspension, or modification thereof shall become effective until fifteen days after the date of such proclama-

tion, revocation, suspension, or modification.

(d) Any decision of the President as to facts under this section

shall be final.

(e) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclantation may be suspended by the President whenever he finds that the circumstances requiring the proclamation or provision. thereof no longer exists, or may be modified by the President whenever he finds that changed circumstances require such modification, to carry out the purposes of this section.15

Sec. 2. The following provisions, reenacted in section 1 of this act, are amended as follows: 16

Sec. 3. (a) The Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated

¹⁸ Sec. 5 of Public, No. 461, 74th Cong., approved February-29, 1936, amended sec. 22 of the Agricultural Adjustment Act, as amended, by inserting after the words "this title", wherever they, appeared, the words "or the Soil Conservation and Domestic Allotment Act, as amended,"; and by deleting the words "an adjustment", wherever they appeared, and inserting in lieu thereof the word "any". — **

18 Subsections (a) to (j) inclusive, of section 2 of the Agricultural Marketing Agreement Act of 1937 are incorporated in the preceding text and in footnotes 2 to 9 inclusive and 11 to 14 inclusive, supra.

by him, upon written application of any cooperative association. incorporated or otherwise, which is in good faith owned or controlled by producers or organizations thereof, of milk or its products, and which is bona fide engaged in collective processing or preparing for market or handling or marketing (in the current of interstate or foreign commerce, as defined by paragraph (i) of section 2 of this act), milk or its products, may mediate and. with the consent of all parties, shall arbitrate if the Secretary has reason to believe that the declared policy of the Agricultural Adjustment Act, as amended, would be effectuated thereby, bonafide disputes, between such associations and the purchasers or handlers or processors or distributors of milk or its products, as to terms and conditions of the sale of milk or its products. The power to arbitrate under this section shall apply only to such subjects of the term or condition in dispute as could be regulated under the provisions of the Agricultural Adjustment Act, as amended, relating to orders for milk and its products.

(b) Meetings held pursuant to this section shall be conducted subject to such rules and regulations as the Secretary may

prescribe.

(c) No award or agreement resulting from any such arbitration or mediation shall be effective unless and until approved by the Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, and shall not be approved if it permits any unlawful trade practice or any unfair method of competition.

(d) No meeting so held and no award or agreement so approved shall be deemed to be in violation of any of the antitrust laws of

the United States.

Sec. 4. Nothing in this act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to, or any provision of, or any act of the Secretary of Agriculture in connection with, any such agreement, license, or order which has been executed, issued, approved, or done under the Agricultural Adjustment Act, or any amendment thereof, but such marketing agreements, licenses, orders, regulations, provisions, and acts are hereby expressly ratified, legalized, and confirmed.

Sec. 5. No processing taxes or compensating taxes shall be levied or collected under the Agricultural Adjustment Act, as amended. Except as provided in the preceding sentence, nothing in this act shall be construed as affecting provisions of the Agricultural Adjustment Act, as amended, other than those enumerated in section 1. The provisions so enumerated shall apply in accordance with their terms (as amended by this act) to the provisions of the Agricultural Adjustment Act, this act, and other provisions of law to which they have been heretofore made applicable.

Sec. 6. This act may be cited as the "Agricultural Marketing

Agreement Act of 1937."

Issued July 28, 1937

UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL ADJUSTMENT ADMINISTRATION

COMPILATION OF ORDER NO. 4 REGULATING THE HANDLING OF MILK IN THE GREATER BOS. MASS., MARKETING AREA, WITH THE INCORPORATION OF AMENDMENT NO. 1 OF AUGUST 1937

Order No. 4, issued by the Secretary of Agriculture February 7, 1936, effective 12:01 a. m., E. S. T., February 9, 1936; Amendment issued by the Secretary July 28, 1937, effective 12:01 a. m., E. S. T., August 1, 1937

The findings, made by the Secretary at the time of issuance of Order No. 4 and the amendment to Order No. 4. have been eliminated from this document for the sake of brevity.

ARTICLE I-DEFINITIONS

Section 1. Terms.—The following terms shall have the following

meanings:

1. "Act" means the Agricultural Marketing Agreement Act of 1937 which reenacts and further amends Public, No. 10, 73d Congress, as amended.

2. "Secretary" means the Secretary of Agriculture of the United

States.

8. "Greater Boston, Massachusetts,, Marketing Area", hereinafter called the "Marketing Area", means the territory included within the boundary lines of the cities and towns of Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham, Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Winchester, Winthrop, and Woburn, Massachusetts.

4. "Person" means any individual, parmership, corporation, as-

sociation, and any other business unit.

5. "Producer" means any person who, in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the Marketing Area, produces milk and distributes, or delivers to a handler, milk of his own production.

6. "Handler" means any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating, who engages in such handling of milk, which is sold as milk or cream in the Marketing Area, as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in milk and its products.

7. "Market Administrator" means the person designated pursuant to article II as the agency for the administration hereof.
8. "Delivery period" means the current marketing period from the first to, and including, the fifteenth day of each month, and from the sixteenth to, and including, the last day of each month.

ARTICLE II-MARKET ADMINISTRATOR

SECTION 1. Selection, Removal, and Bond.—The Market Administrator shall be selected by the Secretary and shall be subject to removal by him at any time. The Market Administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

Sec. 2. Compensation.—The Market Administrator shall be entitled to such reasonable compensation as may be determined by the

Secretary.

Sec. 3. Powers.—The Market Administrator shall have power:

1. To administer the terms and provisions hereof;

2. To receive, investigate, and report to the Secretary complaints of violations of the terms and provisions hereof.

Sec. 4. Duties.—The Market Administrator, in addition to the

duties hereinafter described, shall:

1. Keep such books and records as will clearly reflect the transactions provided for herein;

2. Submit his books and records to examination by the Secretary

at any and all times;

3. Furnish such information and such verified reports as the Secretary may request;

4. Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the Market Administrator;

5. Publicly checlose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 15 days after the date upon which he is required to perform such acts, has not (a) made reports pursuant to article V or (b) made payments pursuant to article VIII;

6. Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions

hereof; and

7. Pay, out of the funds provided by article X, (a) the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the Market Administrator, (b) his own compensation, and (c) all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

Sec. 6. Responsibility.—The Market Administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler, or to any other person, for errors in judgment, for mistakes, or for other acts either of commission or omission, except

for his own willful misfeasance, malfeasance, or dishonesty.

ARTICLE III-CLASSIFICATION OF MILK

Section 1. Sales and Use Classification.—Milk purchased or han-

dled by handlers shall be classified as follows:

1. All milk sold or distributed as milk, chocolate milk, or flavored milk and all milk not specifically accounted for as Class II milk shall be Class I milk; and

Milk specifically accounted for (a) as being sold, distributed, or disposed of other than as milk, chocolate milk, or flavored milk and (b) as actual plant shrinkage within reasonable limits shall be Class II milk.

SEC. 2. Inter-Handler or Non-Hundler Sales.—Milk, including skim milk, sold by a handler to mother handler or to a person who is not a handler and who distributes milk or manufactures milk products shall be precumed to be Class I milk. In the event that such selling handler, on or before the date fixed for filing reports pursuant to article V, notifies the Market Administrator that such milk, or a part thereof, has been sold or used by such purchaser other than as Class I milk, such milk, or part thereof, shall be classified as Class II milk; provided, that if such selling handler does not, on or before the fifteenth day after the end of the delivery period during which such sale was made, furnish proof satisfactory to the Market Administrator in support of the above notification, such milk or part thereof shall then be classified as Class I milk and so included in the statement rendered to the selling handler pursuant to paragraph 3 of section 1 of article VIII.

ARTICE IV-MINIMUM PRICES

Section 1. Class I Prices to Associations of Producers.—Each handler shall pay any association of producers for Class I milk containing 3.7 percent butterfat not less than the following prices:

1. \$3.31 per hundredweight for such milk delivered from the plant of such association to such handler's plant located not more than

40 miles from the State House in Boston;

2. \$3.26 per hundredweight for such milk delivered from the plant of such association to such handler at a railroad delivery point not

more than 40 miles from the State House in Boston; and

1/3. If such milk is delivered containing butterfat more or less than 13.7 percent such handler shall add or subtract, as the case may be, a differential for each one-tenth of one percent above or below 3.7 percent, which differential is the result of dividing by 330 the cream price used in paragraph 1 of section 3 of this article.

Sec. 2. Class I Prices to Producers.—Each handler shall pay pro-

Sec. 2. Class I Prices to Producers.—Each handler shall pay producers, in the manner set forth in article VIII, for Class I milk

delivered by them, not less than the following prices:

1. \$3.19 per hundredweight for such milk delivered from producers' farms to such handler's plant located not more than 40 miles

from the State House in Boston;

2. \$3.01 per hundredweight for such milk delivered from producers' farms to such handler's plant located more than 40 miles from the State House in Boston, less an amount per hundredweight equal to the freight from the railroad shipping point for such handler's plant to such handler's railroad delivery point in the Marketing Area. Such freight shall be calculated according to applicable rail tariffs for the transportation in carlead lots of milk in 40-quart cans and each such can shall be considered to contain 85 pounds of milk;

3. For the purpose of this section the milk which was sold or distributed, during each delivery period, by each handler as Class I

milk shall be presumed to have been that milk which was received at such handler's plant located not more than 40 miles from the State House in Boston (a) directly from producers' farms and (b) from the nearest plants located more than 40 miles from the State House in Boston.

SEO. 3. Class II Prices.—Each handler shall pay producers, in the manner set forth in article VIII, for Class II milk not less than the

following prices per hundredweight:

1. In the case of such milk delivered to a handler's plant located not more than 40 miles from the State House in Boston, a price which the Market Administrator shall calculate as follows: Divide by 33 the weighted average price per 40-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, multiply the result by 3.7, and add 2.125 times the average of the weekly quotations per pound of domestic, 20-30 mesh, casein in bags delivered in carload lots at New York, as published by the Oil, Paint and Drug Reporter during such delivered period, and subtract 42 cents; and

2. In the case of such milk delivered to a handler's plant located more than 40 miles from the State House in Boston, the price calculated by the Market Administrator, pursuant to paragraph 1 of this

section; minus 6 cents.

Spo. 4. Sales Outside the Marketing Area. The price to be paid by each handler to associations of producers or to producers, in the manner set forth in article VIII, for milk utilized as Class I milk outside the Marketing Area, shall be the price applicable pursuant to sections 1 and 2 of this article adjusted by (a) the difference between such applicable price and the price ascertained by the Market Administrator as the prevailing price paid by processors for milk of equivalent use in the market where such Class I milk is utilized and (b) the difference between the freight allowance, if any, set forth in paragraph 2 of section 2 of this article and an amount equal to the carload freight rate approved by the Interstate Commerce Commission for movement of milk in 40-quart cans from the shipping point for the plant where such Class I milk is received from producers to the railroad delivery point serving the market where such Class I milk is sold; provided, that (1) if the market where such Class I milk is utilized is less than 10 miles from the plant where such Class I milk is received from producers, the railroad shipping point for such plant shall be presumed to be the railroad delivery point serving such market, and (2) if the market where such Class I milk is utilized is located in Barnstable, Plymouth, Norfolk, Dukes, and Nantucket Counties, Massachusetts, such handler's railroad delivery point in the Marketing Area shall be considered to be the railroad delivery point serving such market.

SEC. 5. Publication of Class II Prices.—On or before the fifth day after the end of each delivery period, the Market Administrator shall publicly announce the Class II price in effect for such delivery period.

REPORTS OF HANDLERS

Section 1. Periodic Reports.—On or before the eighth day after the and of each delivery period, each handler shall, except as set forth in section 1 of article VI, with respect to milk or cream which was, during such delivery period, (a) received from producers, (b) received from handlers, or (c) produced by such handler, report to the Market Administrator in the detail and form prescribed by the Market Administrator, as follows:

 The receipts at each plant from producers who are not handlers; 2. The receipts at each plant from any other handler, including

any handler who is also a producer;
8. The quantity, if any, produced by such handler; and

4. The respective quantities of milk which were sold, distributed, or used, including sales to other handlers, for the purpose of classification pursuant to article III.

SEC. 2. Reports as to Producers.—Each handler shall report to the

Market Administrator:

1. Within 10 days after the Market Administrator's request with respect to any producer for whom such information is not in the files of the Market Administrator, and with respect to a period or periods of time designated by the Market Administrator, (a) the name and address, (b) the total pounds of milk delivered, (c) the average butterfat test of milk delivered, and (d) the number of days upon which deliveries were made; and

2. As soon as possible after first receiving milk from any producer: (a) The name and address of such producer, (b) the date upon which such milk was first received, (c) the plant at which such producer delivered milk, and (d) the plant, if known, at which such producer delivered milk immediately prior to the beginning of

delivery to such handler.

SEC. 8. Reports of Payments to Producers.—Each handler shall submit to the Market Administrator within 80 days after the end of each delivery period his producer payroll for such delivery period which shall show for each producer: (a) The total delivery of milk with the average butterfat test thereof and (b) the net amount of such producer's payment, with the prices, deductions, and charges involved.

Sec. 4. Outside Cream Purchases.—Each handler shall report, as requested by the Market Administrator, his purchases, if any, of bottling quality cream from handlers who receive no milk from produes, showing the quantity and the source of each such purchase and the cost thereof at Boston.

SEO. S. Verification of Reports.—In order that the Market Administrator may submit verified reports to the Secretary pursuant to paragraph 8 of section 4 of article II, each handler shall permit the Market Administrator or his agent, during the usual hours of business, to (a) verify the information contained in reports submitted in accordance with this article and (b) weigh, sample, and test milk for butterfat.

ARTICLE VI-HANDLERS WHO ARE ALSO PRODUCERS

Section 1. Application of Provisions.—No provision hereof shall apply to a handler who is also a producer and who purchases no milk from producers or an association of producers, except that such handler shall make reports to the Market Administrator at such time and in such manner as the Market Administrator may request.

SEC. 2. Milk Purchased from Producers.—In the case of a handler who is also a producer and who purchased milk from producers, the Market Administrator shall, before making the computations set forth in article VII, (a) exclude from such handler's class I milk up to but not exceeding 90 percent of the quantity of milk produced and sold by him, (b) exclude the milk purchased by him in each class from other handlers, and (c) exclude from his remaining Class II milk the balance of the milk produced and sold by him.

ARTICLE VII-DETERMINATION OF UNIFORM PRICES TO PRODUCERS

Section 1. Computation of Value of Milk for Each Handler.—For each delivery period the Market Administrator shall compute, subject to the provisions of article VI, the value of milk sold or used by each handler, which was not purchased from other handlers, by (a) multiplying the quantity of such milk in each class by the price applicable pursuant to sections 2, 3, and 4 of article IV and (b) adding together the resulting value of each class.

SEC 2. Computation and Announcement of Uniform Prices.—The Market Administrator shall compute and announce the uniform prices per hundredweight of milk delivered during each delivery period in

the following manner:

1. Combine into one total the respective values of milk, computed pursuant to section 1 of this article, for each handler who made the report as required by section 1 of article V for such delivery period and who made the payments required by article VIII for milk received during the delivery period next preceding but one;

2. Add the total net amount of the differentials applicable pursuant

to section 4 of article VIII; "

3. Subtract the total amount to be paid to producers pursuant to

paragraph 2 of section 1 of article VIII;

4. Divide by the total quantity of milk which is included in these computations except that milk required to be paid for pursuant to paragraph 2 of section 1 of article VIII;

5. Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in connection with the payments.

set forth in paragraph 3 of section 1 of article VIII;

6. Add an amount which will prorate, pursuant to section 3 of this

article, any cash balance available; and

7. On or before the twelfth day after the end of each delivery period mail to all handlers and publicly announce (a) such of these computations as do not disclose information confidential pursuant to the Act, (b) the blended price per hundredweight which is the result of these computations, and (c) the Class II price.

SEC. 3. Proration of Cash Balance.—For each delivery period the Market Administrator shall prorate, by an appropriate addition pur-

suant to section 2 of this article, the cash balance, if any, in his hands from payments made by handlers for milk received during the delivery period next preceding but one, to meet obligations arising out of paragraph 3 of section 1 of article VIII.

ARTICLE VIII-PAYMENTS FOR MILK

Section 1. Time and Method of Payment.—On or before the twenty-fifth day after the end of each delivery period, each handler shall make payment, subject to the butterfat differential set forth in section 3 of this article, for the total value of milk received during such delivery period as required to be computed pursuant to section 1 of article VII, as follows:

1. To each producer, except as set forth in paragraph 2 of this section, at the blended price per hundredweight computed pursuent to section 2 of article VII; subject to the differentials set forth in section 4 of this article, for the quantity of milk delivered by such

producer:

2. To any producer, who did not regularly sell milk for a period of 30 days prior to the effective date hereof to a handler or to persons within the Marketing Area, at the Class II price, in effect for the plant at which such producer delivered milk, for all the milk delivered by such producer during the period beginning with the first regular delivery of such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month;

3. To producers, through the Market Administrator, by paying to or receiving from the Market Administrator, as the case may be, the amount by which the payments made pursuant to paragraphs 1 and 2 of this section are less than, or exceed, the value of milk as required to be computed for such handler pursuant to section 1 of article VII, as shown in a statement rendered by the Market Administrator on or before the twentieth day after the end of such delivery

period.

Sec. 2. Errors in Payments.—Errors in making any of the payments prescribed in this article shall be corrected not later than the date for making payments next following the determination of such

errors.

Sno. 3. Butterfat Differential.—If any producer has delivered to any handler during any delivery period milk having an average butterfat content other than 3.7 percent, such handler shall, in making the payments prescribed by paragraphs 1 and 2 of section 1 of this article to such producer, add for each one-tenth of 1 percent of average butterfat content above 3.7 percent or deduct for each one tenth of 1 percent of average butterfat content below 3.7 percent in amount per hundredweight which shall be calculated by the Market Administrator as follows: Divide by 33 the weighted average price per 40-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, subtract 8 cents, and divide the result by 10.

SEC. 4. Location Differentials.—The payments to be made to producers by handlers pursuant to paragraph 1 of section 1 of this

article shall be subject to differentials as follows:

1. With respect to milk delivered by a producer to a handler's plant located more than 40 miles from the State House in Boston, there shall be deducted an amount per hundredweight equal to the freight (considering 85 pounds of milk per can), according to the tariff currently approved by the Interstate Commerce Commission for the transportation, in carload lots of milk in 40-quart cans, to Boston from the zone of location of the handler's plant.

2. With respect to milk delivered by a producer to a handler's plant located not more than 40 miles from the State House in

Boston, there shall be added 18 cents per hundredweight.

8. With respect to milk delivered by a producer, whose farm is located more than 40 miles, but not more than 80 miles, from the State House in Boston, there shall be added 23 cents per hundred-

weight.

4. With respect to milk delivered by a producer, whose farm is located not more than 40 miles from the State House in Boston, there shall be added 46 cents per hundredweight unless such addition gives a result greater than \$3.19, in which event there shall be added an amount which will give a result of \$3.19.

Sec. 5. Other Differentials.—In making the payments to producers set forth in paragraphs 1 and 2 of section 1 of this article, handlers

may make deductions as follows: .

1. With respect to all milk delivered by producers to the plant of a handler which is located more than 40 miles from the State House in Boston and which is located more than 2 miles from a railroad shipping point, an amount not greater than 10 cents per hundredweight; provided, that such deduction has been approved and made public by the Market Administrator prior to the time of payment.

23With respect to milk delivered by producers to a handler's plant which is located more than 14 miles, but not more than 40 miles from the State House in Boston, an amount equal to 10 cents per hundredweight of Class I milk actually sold or distributed in the Marketing Area from such plant, such total amount to be deducted

pro rata on all milk delivered by such producers.

3. With respect to milk delivered by producers to any handler's plant from which the average daily shipment of Class I milk during any delivery period is less than 21,500 pounds, an aggregate amount, pro rated among producers delivering milk to such plant, equal to the difference between the freight to the marketing area at the carload rate and at the less than carload rate for the Class I milk shipped during such delivery period.

ARTICLE IX-MARKETING SERVICES

Section 1. Deductions for Marketing Services.—Except as set forth in section 2, each handler shall deduct an amount not exceeding 2 cents per hundredweight (the exact amount to be determined by the Market Administrator, subject to review by the Secretary) from the payments made direct to producers pursuant to article VIII with respect to all milk delivered to such handler during each delivery period by producers and shall pay such deductions to the Market Administrator on or before the twenty-fifth day, after the end of

such delivery period. Such monies shall be expended by the Market Administrator for market information to, and for verification of weights, sampling, and testing of milk purchased from, said pro-

ducers.

SEC. 2. Producers' Cooperative Association.—In the case of producers for whom a cooperative association, which the Secretary determines to be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act", is actually performing, as determined by the Secretary, the services set forth in section 1 of this article, each handler shall make, in lieu of the deductions specified in section 1 of this article, such deductions from the payments to be made direct to such producers, pursuant to article VIII, as are authorized by such producers and, on or before the twenty-fifth day after the end of each delivery period, pay over such deductions to the association rendering such service.

ARTICLE X-EXPENSE OF ADMINISTRATION

Section 1. Payments by Handlers.—As his pro rata share of the expense of the administration hereof, each handler, except as set forth in section 1 of article VI, shall, on or before the twenty-fifth day after the end of each delivery period, pay to the Market Administrator a sum not exceeding 2 cents per hundredweight with respect to all milk actually delivered to him during such delivery period by producers or produced by him, the exact sum to be determined by the Market Administrator subject to review by the Secretary; provided, that each handler, which is a cooperative association of producers, shall pay such pro rata share of expense of administration only on that milk actually received from producers at a plant of such association.

Sec. 2. Suits by Market Administrator.—The Market Administrator may maintain a suit in his own name against any handler for the collection of such handler's pro rata share of expense set forth in this

article.

ARTICLE XI-EFFECTIVE TIME, SUSPENSION, AND TERMINATION

Section 1. Effectice Time.—The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated,

pursuant to section 2 of this article. *

Sec. 2. Suspension and Termination.—Any or all provisions hereof, or any amendment hereto, shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of

the act authorizing it cease to be in effect.

Sec. 3. Effect.—Unless otherwise provided by the Secretary in the notice of amendment, suspension, or termination of any or all provisions hereof, the amendment, suspension, or termination shall not (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any provisions hereof; (b) release or waive any violation hereof occurring prior to the effective date of such amendment, suspension, or

termination; (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to any such violation.

Sec. 4. Continuing Power and Duty.—If, upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handlers, by the Market Administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination; provided, that any such acts required to be performed by the Market Administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

The Market Administrator, or such other person as the Secretary may designate, (a) shall continue in such capacity until discharged by the Secretary, (b) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the Market Administrator, or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the Market Administrator or

such person pursuant hereto.

SEC. 5. Liquidation After Suspension or Termination.—Upon the suspension or termination of any or all provisions hereof the Market Administrator, or such person as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the Market Administrator's office, and dispose of all funds and property then in his possession of under his control, together with claims for any funds which are unpaid and owing at the time of such suspension of termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the Market Administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

ARTICLE XII-LIARILITY

Secrion 1. Handlers.—The liability of the handlers hereunder is several and not joint and no handlers shall be liable for the default of any other handler.

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After Supreme Court, U. S

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MANLES LEACHED RESPLEY

Nos. 772 and 809

In the Supreme Court of the United States

October Turbs, 1988

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BRIEF FOR THE RESPONDENTS

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Inthe Supreme Court of the United States

OCTOBER TERM, 1938

Nos. 772 and 809

H. P. Hood & Sons, Inc., and Noble's Milk Com-PANY, PETITIONERS

v.

UNITED STATES OF AMERICA AND HENRY A. WALLACE, SECRETARY OF AURICULTURE

WHITING MILK COMPANY, PETITIONER

v.

United States of America and Henry A. Wallace, Secretary of Agriculture

ON WRITE OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINION BELOW

The opinion of the District Court for the District of Massachusetts, dated February 23, 1939, grant-

ing a permanent injunction, is not yet reported (R. Vol. I, 107-114).

JURISDICTION

The decree of the District Court was entered March 9, 1939 (R. Vol. I, 102-106). An appeal to the United States Circuit Court of Appeals for the First Circuit was allowed on March 9, 1939. The jurisdiction of this Court is derived from Section 240a of the Judicial Code as amended by the Act of February 13, 1925.

STATUTE INVOLVED

The statute involved is the Act of May 12, 1933 (48 Stat. 31), as amended August 24, 1935 (49 Stat. 750), and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), 7 U. S. C., Supp. IV, §§ 601 et seq. An annotated compilation of the Act is attached to this brief as Appendix C.

The regulation involved is Order No. 4 as amended which regulates the handling of milk in the greater Boston, Massachusetts, marketing area, and which was issued by the Secretary of Agriculture under the provisions of the Agricultural Marketing Agreement Act. A copy of Order No. 4 as amended is attached to this brief as Appendix D.

¹ Unless otherwise specified, all record references are to the record in H. P. Hood & Sons, Inc., et al. v. United States et al., No. 772.

QUESTIONS PRESENTED

- 1. Whether the Agricultural Marketing Agreement Act of 1937 unconstitutionally delegates legislative power to the Secretary of Agriculture.
- 2. Whether the Agricultural Marketing Agreement Act of 1937 and Order No. 4 as amended promulgated thereunder, are proper exercises of the power of Congress to regulate interstate commerce.
- 3. Whether the provisions of the Agricultural Marketing Agreement Act and of said Order No. 4 as amended deprive the petitioners of property without due process of law, in violation of the Fifth Amendment.
- 4. Whether the amendments to Order No. 4 were validly promulgated by the Secretary of Agriculture in compliance with the provisions of the Agricultural Marketing Agreement Act of 1937.
- 5: Whether the Market Administrator, in computing the blended price, improperly included the milk of persons who were not producers within the meaning of Article I, Section 1, of Order No. 4 as amended.

STATEMENT

- I. PROCEEDINGS IN THE COURTS BELOW
- A. IN H. P. HOOD & SONS, INC., ET AL. v. UNITED STATES ET AL., NO. 772
- On October 1, 1937, respondents filed a bill of complaint in the District Court for the District

of Massachusetts to enjoin petitioners from violating Order No. 4 as amended, regulating the handling of milk in the greater Boston, Massachusetts, marketing area (hereinafter referred to as "the order" or as "the order as amended"). The bill alleged that petitioners were engaged in handling milk in the current of interstate commerce or milk that directly burdened and affected such commerce; that Order No. 4 and the amendments thereto were validly issued by the Secretary of Agriculture and were in force; that petitioners were subject to the terms of the order; and that petitioners had failed and refused to obey the order. The bill prayed for a preliminary and a permanent injunction (R. Vol. I, 2-13).

On November 30, 1937, the District Court issued a temporary injunction requiring petitioners to obey the order (R. Vol. I, 65). On December 8, 1937, the Senior Circuit Judge for the First Circuit granted a supersedeas continuing the temporary injunction in effect on condition that petitioners deposit in the registry of the court the amounts billed to them by the Market Administrator for equalization charges and marketing services under the terms of the order (R. Vol. I, 66-67). Upon appeal from the temporary injunction, the Circuit Court of Appeals for the First Circuit continued in effect the injunction as superseded pending a final determination of the case on the merits (H.P.Hood & Sons, Inc., et al. v. United States, 97 F. (2d) 677). Under the terms of the temporary injunction as superseded, petitioners have deposited \$1,564,471.17 in the registry of the court (R. Vol. I, 131–132).

Petitioners filed answers on November 3, 1937, alleging the unconstitutionality of the Agricultural Marketing Agreement Act, the invalidity of Order No. 4 and the amendments thereto, and that no sums were legally owing under the terms of the order (R. Vol. I, 23-48). On December 30, 1937, E. Frank Branon, a producer selling milk to petitioner H. P. Hood & Sons, Inc., was allowed to intervene as a party defendant (R. Vol. I, 68).

This case, together with twenty-seven companion cases, was referred to a special Master to hear evidence and find the facts (R. Vol. I, 67-68). On January 27, 1939, after more than sixty days of trial, the special Master filed his report (R. Vol. I, 77). The Master's report, which together with certain of the exhibits attached thereto comprises Volume II and Volume III of the record, includes detailed findings with respect to the promulgation and amendment of Order No. 4; the history of, and economic conditions in, the Boston market; the administration of Order No. 4 as amended; and the business and practices of the defendants in the several cases tried before the Master.

On February 23, 1939, the District Court rendered an opinion confirming the Master's report and sustaining the constitutionality of the Act and

¹ The Honorable William A. Loughlin of Gardiner, Massachusetts, sat as the special master.

the validity of the order (R. Vol. I, 116-131). On February 27, 1939, the District Court rendered a supplemental opinion which held that the statements of fact contained in the opinion were intended as findings of fact, and the statements of legal conclusions were intended as rulings of law in accordance with Rule 52 of the Federal Rules of Civil Procedure, and that "all of the material facts in the case are contained in the Master's report" (R. Vol. I, 130-131). On March 9, 1939, a decree was entered which confirmed the Master's report, permanently enjoined petitioners from violating the order, and provided for the distribution of the moneys impounded in the registry. of the court to those persons entitled to such moneys under the terms of the order (R. Vol. I, 102-106). On the same day petitioners filed their notice of appeal to the Circuit Court of Appeals for the First Circuit (R. Vol. I. 132). Thereupon the District Court entered a stay of its decree pending the determination of the case on appeal (R. Vol. I, 133-134). The case was docketed in the Circuit Court of Appeals on March 21, 1939. On March 24, 1939, before hearing or judgment in the Circuit Court of Appeals, petitioners filed in this Court a petition for a writ of certiorari. That petition was granted on March 27, 1939.

B. IN WHITING MILE COMPANY V. UNITED STATES ET AL., NO. 809

This suit is a companion suit to the case of H.P. Hood & Sons, Inc., et al., v. United States, et al.,

No. 772. The bill of complaint, which was filed on the same date, contains allegations similar to those in the Hood case (R. Vol. I, 1-3). The prayers for relief were the same and the proceedings in the court below followed a similar course. Prior to the hearing on the permanent injunction Chester D. Noyes, a producer delivering milk to the petitioner Whiting Milk Company, was allowed to intervene as a party defendant (R. Vol. I, 36). During the pendency of this litigation petitioner Whiting Milk Company deposited \$563,130.02 in the registry of the court under the terms of the temporary injunction as superseded by the order of Senior Circuit Judge for the First Circuit and as affirmed by the Circuit Court of Appeals for the First Circuit (R. Vol. I. 99). The opinion of the District Court rendered February 23, 1939, was applicable to this case as well as the other cases then before it, and similar decrees were entered in all of the cases (R. Vol. I, 63-67, 76-91). Petitioner filed notice of appeal on March 10, 1939 (R. Vol. I, 91), and the case was docketed in the Circuit Court of Appeals on March 23, 1939. On March 25, 1939, prior to hearing or judgment in that court, petitioner filed in this Court a petition for a writ of certiorari. The petition was granted on March 27, 1939.

The record references in this subsection B refer to the record in the case of Whiting Milk Company v. United States et al., No. 809.

II. THE PROVISIONS OF THE AGRICULTURAL MARKET-ING AGREEMENT ACT OF 1937

The Court is respectfully referred to the detailed description of the provisions of the Agricultural Marketing Agreement Act of 1937, which is contained on pages 10 to 17 of the brief for the United States in United States of America v. Rock Royal Co-operative, Inc., et al., No. 771.

III. PROCEEDINGS IN CONNECTION WITH THE PRO-MULGATION OF ORDER NO. 4 AND THE AMENDMENTS THERETO

A. THE PROMULGATION OF ORDER NO. 4

Order No. 4 was originally issued on February 7, 1936, pursuant to the provisions of the Agricultural Adjustment Act of 1933 (Act of May 12, 1933, 48 Stat. 31, as amended August 24, 1935, 49 Stat. 750). The proceedings in connection with the promulgation of Order No. 4 may briefly be described as follows:

- 1. Notice of Hearing.—On November 30, 1935, the Secretary of Agriculture, pursuant to Section 8c (3) of the statute, gave notice of a public hearing on a proposed marketing agreement and order regulating the handling of milk in the greater Boston marketing area (R. Vol. II, 4-5).
- 2. The Hearing.—In accordance with the notice, public hearings were held pursuant to Section 8c (3) of the statute on December 10 and 11, 1935, at St. Johnsbury, Vermont, and on December 12, 1935,

at Boston, Massachusetts. At these hearings interested parties were offered an opportunity to be heard on the proposed marketing agreement and order. A certified copy of the testimony and exhibits received at these hearings was introduced in evidence before the Master, and attached to his report as Appendix A, and made a part thereof. This appendix has been certified to this Court as an original exhibit (R. Vol. II, 6; Vol. I, 134).

- 3. Tentative Approval of the Proposed Marketing Agreement.—On January 18, 1935, the Secretary tentatively approved a marketing agreement. Thereafter handlers of 50 percent of the volume of milk in the proposed area failed to sign the tentatively approved agreement (R. Vol. II, 6).
- 4. Proclamation as to the base period —On January 25, 1936, the Secretary of Agriculture, acting pursuant to the provisions of Section 8e of the statute, issued a proclamation in regard to the base period which was to be used in establishing the minimum prices fixed by the order. In that proclamation he declared that the purchasing power of milk in the greater Boston marketing area could not be satisfactorily determined from available statistics in the Department of Agriculture for the period August 1909 to July 1914, but that the purchasing power of such milk could be satisfactorily determined from available statistics in the Department of Agriculture for the period August 1909 to July 1929; and that the latter period should

be used for the purpose of executing a marketing agreement and issuing an order for that area (R. Vol. II, 6-7).

5. Determination as to the necessity for issuing an order.—On February 5, 1936, the Secretary, acting under provisions of Section 8c (9) of the statute, determined that the refusal or failure of handlers of 50 percent of the volume of milk covered by the proposed marketing agreement to sign the agreement tended to prevent the effectuation of the declared policy of the Act; that the issuance of the proposed order was the only practical means pursuant to such a policy of advancing the interests of producers in the area; and that the issuance of the proposed order was approved by 75 percent of the producers who, during a representative period, had engaged in the production of milk for sale in the area (R. Vol. II, 7-9). This determination was approved by the President of the United States on February 6, 1936, in accordance with the provisions of Section 8c (9) of the statute (R. Vol. II, 9).

6. The issuance of Order No. 4.—On February 7, 1936, the Secretary, acting pursuant to the provisions of 8c (4) of the Act, issued Order No. 4, regulating the handling of milk in the greater Boston marketing area. The order contained detailed findings with respect to conditions in the greater Boston marketing area, and the provisions of the

order, including a finding that all of the terms and conditions of the order would tend to effectuate the declared policy of the Act. The order became effective at 12:01 A. M. on February 9, 1936 (R. Vol. II, 9-36).

7. The suspension of Order No. 4.—Order No. 4 remained in effect until August 1, 1936. At that time the Secretary suspended the order (R. Vol. II, 36-37).

B. THE AMENDMENT OF ORDER NO. 4

The order amending Order No. 4 was issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 which reenacted and amended the Agricultural Adjustment Act (June 3, 1937, c. 296, 50 Stat. 246). The proceedings in connection with the issuance of the amendment may be briefly described as follows:

1. Notice of hearings on a proposed new marketing agreement and order.—On June 19, 1937, the Secretary of Agriculture gave notice of hearings to be held on a proposed marketing agreement and order regulating the handling of milk in the greater Boston marketing area (R. Vol. II,

^{&#}x27;On July 23, 1936, the District Court for the District of Massachusetts, on the authority of *United States* v. *Butler*, 297 U. S. 1, held that the provisions of the Agricultural Adjustment Act under which the order had been issued were unconstitutional. *United States* v. *Buttrick*, 15 F. Supp. 655.

37-39). On June 24, 1937, the Secretary gave notice of the cancellation of those hearings (R. Vol. II, 39-40).

2. Notice of hearing on a proposed amendment— On June 24, 1937, the Secretary issued a notice of a hearing with respect to a proposal to amend. Order No. 4 and to amend the marketing agreement which had been tentatively approved on January 18, 1936 (R. Vol. II, 41-43).

3. Termination of the suspension of Order No. 4.—On June 25, 1937, the Secretary issued an order terminating the suspension of Order No. 4. That order provided that the termination was to be effective as to certain provisions of Order No. 4 on July 1, 1937; and was to be effective as to the remaining provisions on August 1, 1937 (R. Vol. II, 40-41).

4. The hearings on the proposed amendment.— In accordance with the notice, hearings were held pursuant to Section 8c (3) of the Act in St. Johnsbury, Vermont, on June 30, 1937; in Boston, Massachusetts, on July 1, 1937; and in Augusta, Maine,

On June 16, 1937, the Circuit Court of Appeals for the First Circuit reversed the decision of the District Court referred to in footnote 3, supra. United States v. Burrock, 91 F. (2d) 66.

^{*}The provisions which were reinstated as of July 1, 1937, may be described as the formal and administrative provisions of the order. The provisions which were reinstated as of August 1, 1937, may be described as the price-fixing and payment provisions of the order.

on July 2, 1937. At these hearings interested parties were given an opportunity to be heard and to introduce evidence. A certified copy of the testimony and exhibits received at these hearings was introduced in evidence before the Master and attached to his report as Appendix B and made a part thereof. This Appendix has been certified to this Court as an original exhibit (R. Vol. II, 43; Vol. I, 134).

5. Tentative approval of the proposed amendment.—Thereafter the Secretary tentatively approved the amendment to the Marketing Agreement, and handlers of 50 percent of the volume of milk in the area failed to sign the agreement as amended (R. Vol. II. 44).

6. Determination as to the necessity for issuing the amendment.—On July 27, 1937, the Secretary, acting pursuant to the provisions of Section 8c (9) of the Act, determined that the failure of handlers of 50 percent of the volume of milk in the area to sign the proposed marketing agreement tended to prevent the effectuation of the declared policy of the Act; that the issuance of the amendment to the order was the only practical means of advancing the interests of producers in the area pursuant to such policy; and that the amendment was favored by 70 percent of the producers who, during a representative period, had engaged in the production of milk for sale in the area (R. Vol. II, 44-45). That determination was approved on July 27,

1937, by the President of the United States. (R. Vol. II, 45.)

7. Issuance of the amendment.—On July 28, 1937, the Secretary, after making detailed findings, including a finding that the issuance of the amendment to the order and all the terms and conditions of the order as amended would tend to effectuate the declared policy of the Act, issued the amendment to Order No. 4 (R. Vol. II, 46-59). The amendment provided that it should become effective at 12:01 A. M. on August 1, 1937.

IV. THE HISTORY OF THE BOSTON MARKET AND A DESCRIPTION OF THE ECONOMIC CONDITIONS EXISTING THEREIN

Order No. 4 as amended applies to the greater Boston, Massachusetts, marketing area (hereinafter referred to as the "Boston market" or as the "marketing area"), which includes Boston and certain other nearby towns and cities." The legal problems

For the purpose of determining whether the issuance of the amendment was favored by the producers, the Secretary, acting pursuant to the provisions of Section 8c (19) of the Act, conducted a referendum in the milkshed. The relevant facts with respect to this referendum are discussed on pages 112–119, infra.

The Boston market includes the territory within the boundary lines of the cities and towns of Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Rev. e, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham,

which arise under the Agricultural Marketing Agreement Act of 1937 and Order No. 4 as amended should be considered in the light of the economic problem in the Boston market with which the Act and the order deal. The Master's report contains detailed findings with respect to this problem. (R. Vol. II, 76–136). The more pertinent findings of the Master on this aspect of the case may be summarized as follows:

A. THE ECONOMIC IMPORTANCE OF THE DAIRY INDUSTRY

In 1929 the national total cash income from all farm production was \$10,284,479,000 of which 18 percent was derived from dairy products. By 1932 the total farm income had dwindled to \$4,-368,296,000 of which 22.6 percent was income from dairy products. In 1935 the total farm income had risen to \$7,203,416,000, but only 17.9 percent was income from dairy products (R. Vol. II, 93). In the same year, however, in Massachusetts, 37.7 percent of the state's total cash income from farm production was from dairy products; in Maine, 24.2 percent; in New Hampshire, 44.1 percent; and in Vermont, 66.8 percent (R. Vol. II, 93). It is also significant to note the percentage of farms in these four states which reported for the year 1929 that more than 40 percent of their income was derived from dairying. The percentages follow:

Watertown, Wellesley, Weymouth, Winchester, Winthrop, and Woburn, Massachusetts.

Maine, 16.9; New Hampshire, 29.1; Vermont, 57,9; and Massachusetts, 30.4 (R. Vol. II, 95).

There are approximately 40,000 dairy farmers in the New England states and approximately 18,000 of them are engaged in producing milk for the Boston market. In the greater part of New England, dairying is the principal agricultural occupation (R. Vol. II, 90).

B. THE HISTORY OF DAIRYING IN NEW ENGLAND

Since 1890 there has been a marked increase in the production of milk in New England for sale as fluid milk in Boston and other marketing areas. By 1890 the diversified type of agriculture formerly practiced, consisting of the cultivation of small grains and the raising of livestock, had been largely replaced by dairy farming. Dairy farming, between 1890 and 1920, consisted of the production of milk for cream or for butter purposes. In the beginning butter was made on the farm; later whole milk was delivered to a local creamery

^{*}In 1936 the Massachusetts Milk Control Board in a report to the General Court of Massachusetts (House No. 328—January 1937) stated:

The dairying industry of Massachusetts is the third largest industry in the State. During the past two years there has been an increase in the number of dairy cows on farms in the Commonwealth, and in 1935 the value of dairy farm property in the Commonwealth was estimated in excess of two hundred million dollars.

The business of supplying consumers with milk and its products in the Commonwealth requires the services of more than fifty-two thousand people.

where it was separated and the butterfat marketed as cream or butter; about 1910 the farmers began separating their cream on the farm and delivering it to the local creameries. Beginning in 1920 there was a shift to the production of milk for the fluid milk market. Among the factors contributing to this shift were the higher prices received for fluid milk, the construction of roads through rural areas, and the growth of cooperative creameries engaged in receiving whole milk for shipment to the Boston market (R. Vol. II, 110–112).

The change from the production of milk for use as cream or butter to the production of milk for fluid purposes resulted in increased costs of production for the farmer. The production and distribution of milk for fluid purposes are subject to special sanitary regulations imposed by the New England States and by the local subdivisions thereof. So far as these regulations apply to the prod ction of milk they relate to the cleanliness and ventilation of stables and milk houses; the use of proper equipment for cooling milk; the health and cleanliness of cows; and a number of other circumstances (R. Vol. II, 89). Compliance with these regulations requires expenditures for equipment and increases operating costs. As a result it: costs from 35 to 50 cents per hundredweight more to produce milk for fluid purposes than it does to produce milk for manufacturing purposes or for cream (R. Vol. II, 111-112).

C. THE BOSTON MILKSHED AND INTERSTATE COMMERCE IN MILK IN THE BOSTON MARKET

In the New England area the Boston market is generally considered as the primary milk market. All other markets in that area are termed secondary markets (R. Vol. II, 87). The present Boston milkshed covers that part of Maine south of Bangor, a large part of New Hampshire, practically the entire State of Vermont, a small area along the eastern boundary of New York, and a relatively small portion of the Commonwealth of Massachusetts (R. Vol. II, 78-79). The growth of the Boston milkshed from 1900 to its peak in 1926 is shown by four maps in the Master's report (R. Vol. II, 77). The present milkshed is shown by a map showing the location of country receiving stations shipping to Boston (R. Vol. II, 79).

Commerce in milk in the Boston market is predominately interstate in character. The following table shows the average percentage of the total supply of milk in the Boston market, supplied by each of the listed states during the period 1930 to 1936 (R. Vol. II, 78):

Vermont	58 percent
New York	· 7 percent
Maine	12 percent
Massachusetts	11 percent
New Hampshire	12 percent

¹⁰ The area in which are located farms that produce the fluid milk supply for a metropolitan area is ordinarily described as a milkshed (R. Vol. II, 76).

Milk is a highly perishable product and because of its bulk cannot profitably be shipped a long distance. If it is to be sold for consumption as fluid milk, it must be moved rapidly from the point of production to the ultimate consumer so as to reach the consumer in a condition which complies with the health regulations in the market. quently, the size of the milkshed is, to some extent, limited by these factors. However, milk which is to be used for manufacturing purposes can be gathered from an area much wider than the area which furnishes the fluid milk supply. One reason for this is the fact that such milk can be converted int. a concentrated product near the source of supply, thereby reducing the shipping costs in relation to the cost of transporting the raw milk. Furthermore, the concentrated products are less perishable and may be shipped greater distances (R. Vol. II, 78-80).

D. DISTRIBUTING AGENCIES AND THEIR METHODS OF OPERATION

The distributing agencies subject to Order No. 4 as amended are defined by the order as "handlers" and will be so designated in this brief. The handlers operating in the Boston market include both cooperative organizations of producers and proprietary dealers. There are two principal types of cooperative organizations in the market. One is the bargaining cooperative whose primary function is

to bargain on behalf of its members with the handlers as to the sale price of milk which the members deliver directly to the handlers (R. Vol. II, 112). This type of cooperative is not classified as a handler by the order.

The other type of cooperative organization owns and operates facilities for the handling and processing of milk which it receives directly from its members (R. Vol. II, 112-113). Such cooperatives are handlers as defined in the order (Order, Art. I, par. 6; R. Vol. II, 60). In this latter class there are cooperatives which do only a wholesale business and also cooperatives which distribute directly to consumers through organizations which they own or control (R. Vol. II, 112)."

The proprietary handlers operating in the Boston market, such as petitioners, are either individuals or corporations (R. Vol. II, 116). The Hood Company ¹² and the Whiting Company are the largest proprietary handlers operating in the mar-

Dairies, Inc., not only handles the milk of its members but also sells the milk of a number of independent cooperative associations. At the present time, twelve cooperative organizations are members of New England Dairies, Inc. On January 1, 1936, New England Dairies, Inc., controlled approximately 75 percent of the total milk coming into the greater Boston marketing area. Between that date and January 1, 1938, the percentage decreased to 30 to 40 percent (R. Vol. II, 114).

^{**&#}x27;12 Unless otherwise specified the Hood and Noble Companies will be collectively referred to as the Hood Company; Noble's Milk Company is a subsidiary of H. P. Hood & Sons, Inc. (R. Vol. II, 215.).

ket (R. Vol. II, 118). Their relative position in the market is indicated by the fact that, in the delivery period August 1–15, 1937, these two handlers controlled approximately 50 percent of the Class I or fluid milk sales in the Boston market and controlled 33 percent of all sales in the market (R. Vol. II, 118).

Among the proprietary organizations engaged in the retail distribution of milk in the market, some receive all or most of their milk directly from producers; others buy all or the greater portion of their milk from other handlers. Some of the smaller handlers produce all of their supply on their own farms (R. Vol. II, 118). The order and this litigation affect chiefly those handlers who fall within the first category. Such handlers operate in substantially the same manner as petitioners whose operations are described in the Master's report (R. Vol. II, 212–216). However, these handlers operate on a smaller scale and relatively few of them engage in manufacturing operations of any kind."

Most of the larger proprietary handlers and all of the operating cooperative organizations operate country receiving stations (R. Vol. II, 118). These stations are located at points throughout the milkshed where the handlers collect or receive milk from producers. A map showing the location of the various country stations operated by handlers

¹³ For a description of the organization and business of several of the smaller handlers, see Record, Vol. II, 237-266.

supplying the Boston market appears in the Master's report (R. Vol. II, 79).

At receiving stations which handle only milk which is to be used for fluid purposes, the milk is weighed, tested, cooled, and put in containers for shipment to the market (R. Vol. II, 118). Some of the receiving stations also have equipment for manufacturing operations.¹⁴

E. ECONOMIC CONDITIONS, MARKETING DEVICES, AND COMPETITIVE PRACTICES IN THE BOSTON MARKET

1. Methods of pricing milk.—The uses of milk may be divided into two general categories: (1) consumption in fluid form as an item of diet, and (2) manufacture into cream, ice cream, butter, condensed milk, candy, and similar products. The value of milk depends primarily upon the use to which it is put. Prior to 1918, milk was usually sold in the Boston market on what is known as the "flat price plan" (R. Vol. II, 123–124). Under this system the handler paid the producer a fixed price—usually announced in advance—for all milk delivered, regardless of the use which was actually made of the milk (R. Vol. II, 123).

Since 1918 the greater part of the milk handled in the Boston market has been paid for primarily on the basis of the use which the handler has made

¹⁴ A station which is so equipped necessarily represents a larger capital investment than a station which handles only fluid milk (R. Vol. II, 118). There are also certain additional operative costs incidental to such a station which are not incurred in handling fluid milk. (R. Vol. II, 118–119).

of the milk (R. Vol. II, 96, 120-121, 124-128). For the purposes of this method of payment, milk has been classified as "Class I" and "Class II" (R. Vol. II, 96). The definitions of these two classes have varied from time to time, but, normally, all milk used for fluid purposes was treated as Class I and paid for on that basis while milk used for other purposes was classified as Class II and paid for on the basis of a lower price " (R. Vol. II, 9 122).

Order No. 4 as amended defines Class I milk as "all milk sold or distributed as milk, chocolate milk, or flavored milk, and all milk not specifically accounted for as Class II milk" (Art. III, Sec. 1, par. 1), and Class II milk as "milk specifically accounted for (a) as being sold, distributed, or disposed of other than as milk, chocolate milk, or flavored milk, and (b) as actual plant shrinkage within reasonable limits" (Art. III, Sec. 1, par. 2). The definitions contained in the order substantially represent the customary classification adopted in the market (R. Vol. II, 96, 122, 124-128).

Class II milk has always brought a substantially lower price in the Boston market. Since Class II milk is used for manufacturing purposes, it must compete in the market with milk which does not meet the strict requirements applicable to milk

There have been times when the classifications used for the purpose of fixing prices have been merely bargaining devices which had no relation to the actual use to which the milk was put. This was particularly true of the classifications IIa and IIb. (R. Vol. II, 96, 126–129).

produced for consumption as fluid milk, and with products of milk produced in other parts of the United States (R. Vol. II, 97). Furthermore, the fact that the area supplying Class I milk is restricted (R. Vol. II, 78, and see p. 19, supra) makes it possible for producers to obtain a higher price for milk which is to be used for Class I purposes. But there are no physical or intrinsic characteristics which distinguish Class I milk from Class II milk (R. Vol. II, 97). Thus the classification and, accordingly, the difference in the price a producer receives for milk of the two classes rests not upon differences in cost of production or in quality but solely upon the use made of the milk after it leaves the hands of the producer.

2. Methods of distributing the proceeds of prices.—When a farmer delivers his milk to a handler in the form of whole milk he does not deliver Class I or Class II milk as such. Because the milk of a particular producer is commingled with the milk of many other producers, the handler does not know to what use the milk of the particular producer is ultimately put. Some kind of an equalization or pooling device is therefore an essential part of any use price plan (R. Vol. II, 122).

One such equalization device is the so-called dealer pool. In a dealer pool the dealer pays to the producers who sell milk to him a price per hundredweight which is sometimes called the "blended" or "composite" price. This price is

computed in the following manner. The total number of units sold by such dealer for Class I purposes is multiplied by the Class I price. The total number of units sold or utilized for Class II purposes is multiplied by the Class II price. The two results are added together and the sum is divided by the total number of units of milk. The resulting quotient is the blended or composite price paid by that dealer to his producers. Other dealers pay their producers prices similarly computed on the bases of their utilization. The blended price paid by each dealer may differ from that paid by other dealers. It varies with the percentage of milk utilized by the individual dealer in each of the classes (R. Vol. II, 122–123).

A marke wide pool is an equalization device under which the individual producer is paid for the milk which he sells in accordance with the use made of all the milk sold in the market rather than the use made of the individual producer's milk or the use made of all the milk of the particular dealer to whom the producer delivered. Thus, the blended price or composite price is computed, in the case of a market-wide equalization pool, by multiplying the amount of all the milk in the market disposed of for Class I purposes by the Class I price and the amount of all the milk disposed of in the market for Class II purposes by the Class II price and by dividing the sum of the two resulting figures by the total amount of milk disposed of in the market (R. Vol. II, 123).

Order No. 4 as amended provides for equalization on the basis of a market-wide pool. In effect, the order treats the milk of all producers engaged in production of fluid milk for the Boston market as if commingled in a common supply reservoir from which the various handlers purchase at the minimum class prices fixed in the order. A more detailed description of the operation of the order appears on pages 34-41, infra.

3. Necessity for an adequate supply of fluid milk.—According to the 1930 census, the population of the cities and towns constituting the greater Boston marketing area was 2,001,770 (R. Vol. II, 88-89). In 1937, a daily average of 616,200 quarts of fluid milk and 63,360 quarts of cream were brought by rail and truck into the marketing area (R. Vol. II, 88). These figures indicate a daily average consumption of approximately six-tenths of a pint of fluid milk per person.

Fluid milk is a necessary article of diet for children and is an extremely valuable article of diet for adults. Milk provides vitamins which cannot be obtained as easily from other foods (R. Vol. II, 88). It is of paramount importance that an adequate and wholesome supply of fluid milk be available at all times. As it has been explained on page 17, supra, the applicable health regulations entail additional expense. The necessity for an adequate fluid milk supply produced in conformity with the health regulations makes it imperative

that farmers receive a price which will enable them to comply with the applicable regulations.

4. The difficulty of adjusting the supply of fluid milk to the demand.—From month to month the demand for fluid milk does not vary to any great extent. There are, however, daily variations (R. Vol. II, 94). It is always necessary to have available in excess of the normal daily demand a surplus which is sufficient at all times in the year to meet the peak daily demand (R. Vol. II, 94). For example, in order to have an adequate supply for November, the period of the year when the supply available for the Boston market is smallest, it is necessary that there be sufficient production to meet the normal demand for fluid milk plus a surplus equal to 20 or 25 percent of the total supply (R. Vol. II, 94, 96). This 20 or 25 percent surplus is sometimes referred to as the "necessary surplus" (R. Vol. II, 94). As is implied by the term, this surplus must be available to meet any extraordinary requirements. If not sold as fluid milk it must be converted into manufactured products because milk is a perishable commodity 'that cannot be stored.

The difficulties in the Boston market arise from natural factors peculiar to milk production. The production of milk varies greatly at different seasons of the year (R. Vol. II, 92). Cows normally freshen in the spring and are fed grass which increases the flow of milk. As pastures begin to

dry up, the production of milk falls off. Normally, production reaches the lowest point in November, begins to increase in February, and reaches the peak in June (R. Vol. II, 92). The number of cows necessary to produce the fluid milk requirements, plus the necessary surplus in November, will produce a much greater amount at other seasons of the year (R. Vol. II, 96). Considering the amount of milk produced by the number of dairy cows being milked for the Boston market in November as 100, the amount of milk produced by the same number of cows for the month of June would normally be approximately 175; for the month of July 165; for the month of August 150; for the month of September 140; and for October. 130 (R. Vol. II, 92).

In view of these conditions, it is apparent that if milk is to be available to supply the fluid milk requirements of the Boston market in the period of least production, facilities must be provided for handling the inevitable excess at other seasons of the year. This excess is usually converted into manufactured products and consequently commands a substantially lower price (R. Vol. II, 96, 97). The problem arises as a result of the necessity, in the period of flush production, of diverting for low priced manufacturing uses, some part of all of the milk produced by some farmers whose production is necessary to meet the fluid milk requirements of the market in the short season.

5. Competitive Practices.—Due to the fact that the price of Class I or fluid milk has always been higher than the price of Class II milk which is used for manufacturing purposes, the tendency has been for farmers to attempt to dispose of a greater part. of their milk as Class I (R. Vol. II, 98). Since the farmers' access to the fluid milk market is through the handler and the ratio between the amount of milk sold as Class I and the amount sold as Class H varies between handlers, the tendency has been for farmers to attempt to market their milk through handlers who maintain a low percentage of Class II or surplus milk (R. Vol. II, 98). tendency has caused price competition among producer groups which has resulted in lower prices to all farmers (R. Vol. II, 98-99). Price cutting among producer groups has also, led to a general eutting of prices by handlers (R. Vol. II, 98). The Master's report contains specific findings with respeet to the disorderly marketing conditions which from time to time have ensued as a result of these competitive practices.16 Furthermore, at times the

¹⁶ See particularly the findings of the Master with respect to the price declines in 1926 and 1930 (R. Vol. II, 98). See also his findings with respect to the situation in 1933 when it was necessary for the largest cooperative association to make an adjustment in its announced price at the end of each month in order to meet the competition of milk which was coming into the market at cut prices (R. Vol. II, 99). The Master also found that on three different occasions between 1916 and 1936 disputes have arisen between groups of producers and handlers in the market with respect to the

decreases in the price to farmers have not been accompanied by corresponding decreases to consumers (R. Vol. II, 99-100).

The record shows that the Boston market is extremely sensitive to such competitive tacties and that a relatively small amount of milk can easily disturb the equilibrium of the market. It is possible that as little as two thousand quarts of milk may affect the price (R. Vol. II, 135). There has been a time when a carload of milk would drop the wholesale price in the market as much as one cent per quart. In the absence of regulation this would be true today (R. Vol. II, 135). Moreover, any regulation which is to be effective must be applicable to all milk. If the order should be applied to only part of the milk in the market, it would be possible for some handlers to obtain a competitive advantage by purchasing milk which was not regulated (R. Vol. II, 135). The inevitable result would be disruption of the market.17

marketing of milk which have resulted in the withdrawal of milk from certain distributors. One of these so-called "milk strikes" occurred in 1936-1937 and as a result some of the handlers in the market found it necessary to obtain supplies of fluid milk from areas in Vermont and New York which normally shipped to the New York market (R. Vol. II, 100-101).

¹⁷ In the period between 1933 and 1936 certain flat-price buyers in the market, who did not comply with the federal licenses and orders, bought close to their fluid milk requirements, paid slightly more than the blended price payable under the license and orders, and still obtained their milk at a cost which was lower than the cost of Class I milk pre-

6. Efforts to solve the problems created by the burden of the surplus milk and the competitive practices which that burden stimulated.—Between 1915 and 1933 a number of investigations were made of conditions in the Boston market with a view to examining marketing conditions and the price fluctuations which had occurred from time to time and for the purpose of formulating plans to deal with such conditions. In 1916 and 1917 the Boston Chamber of Commerce made such a study and on December 31, 1917, published a report entitled "The Milk Question in New England" (R. Vol. II, 132). In 1921 and 1922 a committee, consisting largely of producers, made an investigation of marketing practices in the Boston market with a view to devising a marketing plan. A similar study was made in 1924 with particular reference to the developments which had taken place in the Boston market between 1921 and 1923 (R. Vol. II, 132). Again in 1927 the Commissioners of Agriculture of the states of Maine, New Hampshire, Vermont, and Massachusetts caused a study to be made with respect to the prices of milk, various suggested marketing plans, and certain proposals which had been made for the handling of surplus milk (R. Vol. II, 132 133).

In 1930, the Commissioners of Agriculture in the states of Maine, New Hampshire, Vermont,

scribed in the license and orders (R. Vol. II, 136). It is obvious that these handlers obtained a substantial competitive advantage by these tactics.

and Massachusetts selected a committee for the purpose of holding hearings and making recommendations from which they hoped to bring about a more orderly and stabilized condition in the Boston market (R. Vol. II, 130). This committee submitted a report recommending that a central marketing agency be formed to handle and market the milk of northern New England so as to bring about a uniform basis of price in the market and promote sales for all producing groups. It was intended that the central agency should operate a market-wide pool so that all producers would have a fair share of the fluid milk market. This plan was never consummated (R. Vol. II, 130).

In 1932 producer organizations requested the Governors of the New England states to appoint a board to work out a uniform basis for the sale of milk in the Boston market (R. Vol. II, 130). This board was known as the Governor's Dairy Advisory Board and, working in conjunction with producer organizations, proposed a plan for establishing uniform prices and a market-wide equalization pool. The proposal did not receive the necessary assent of a sufficient number of producers and was not put into effect (R. Vol. II, 130-131).

Subsequently, another plan was evolved for the establishment of uniform prices based on the use value of milk sold in the Boston market and for the operation of individual handler pools. This plan was put into effect in May 1932 and continued in operation through December 1932 (R. Vol. II, 131).

In January 1933 various cooperative groups met and attempted to work out a new plan for the Boston market (R. Vol. II, 131). The proposal which was finally adopted contemplated that the distributors should act as agents of the producers for the distribution of milk and should receive a commission for their services. A central sales agency was to handle the milk for the producers on a uniform price basis and a market-wide equalization pool was to be operated. Again the necessary producer. assent was not obtained and the plan did not go into operation (R. Vol. II, 131-132). However, from June 1, 1933, until November 3, 1933, certain cooperative groups in the Boston market-did market their milk through a central sales agency and these groups operated an equalization pool through which all producers whose milk was handled by them were paid on the basis of a uniform blended price (R. Vol. II, 132).

It is significant that all of the marketing plans proposed between 1930 and 1933 contemplated the use of a market-wide equalization pool.

7. State Regulation.—Numerous efforts have been made by the New England states to solve the problems connected with the marketing of milk in that area. The legislatures of Maine, New Hampshire, Vermont, and Massachusetts have all enacted laws providing for the regulation of marketing conditions, including the regulation of prices (for Maine, see ch. 13 of the Public Laws of 1935; for New Hampshire, see ch. 21, Laws of 1935; for Ver-

mont, see the Act of March 26, 1937; and for Massachusetts, see ch. 376, Acts of 1934, ch. 300, Acts of 1936, and ch. 428 of the Acts of 1937). The Milk Control Board of the Commonwealth of Massachusetts has promulgated an order fixing prices to be paid Massachusetts producers and otherwise regulating the handling of milk in the Boston marketing area (R. Vol. II, 136; R. Vol. III, 76).

V. THE PROVISIONS OF ORDER NO. 4 AS AMENDED AND THEIR ADMINISTRATION

Order No. 4 applies to all milk handled in the current of interstate commerce which is sold in the Boston marketing area. The order regulates all handlers who engage in such handling of milk sold in the area as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in milk and its products.¹⁶

Article II of the order provides for the appointment by the Secretary of Agriculture of a Market Administrator to perform certain ministerial functions under the order. The appointment of a Market Administrator is authorized by paragraph (C), subsection 7, Section 8c of the Act. Pursuant to the statute, Samuel W. Tator was designated as Market Administrator under the order on August 1, 1937 (R. Vol. II, 137). The Market Administrator maintains an office and a staff of em-

¹⁸ See Appendix B, Article I, Section 1.

ployees in Boston (R. Vol. II, 137). The expenses of his office and his staff are paid from the proceeds of the administration charge imposed by Article X of the order. (See pp. 4-41, infra.)

Article III of the order classifies milk according to the form in which it is sold. All milk sold as milk, chocolate milk, or flavored milk is classified as Class I milk, and all milk disposed of in other forms is classified as Class II milk (R. Vol. II, 42, 43).

Article IV of the order fixes a minimum price for Class I milk. The same article establishes a formula by which the Market Administrator calculates a price for Class II milk. The provisions classifying milk or fixing a price for each classification are specifically authorized by paragraph (A), subsection (5), Section 8c of the Act. The prices fixed by Article IV are minimum and not maximum prices, and nothing in the order prevents a handler from paying a producer more than the minimum prices. Neither the Act nor the order purports to regulate the price at which the handler may sell milk.

The minimum prices fixed by Article IV are used for the purpose of computing the value of the milk

[&]quot;The important components of the formula are the market price of cream in the Beston market and the market value of casein. The order divides each month into two delivery periods, one extending from the first to the fifteenth day of the month, and another from the sixteenth day to the last day of the month. A new Class II price is calculated for each delivery period.

which is delivered in a particular period by all producers to all of the handlers subject to the order. The order provides an effective and equitable method for distributing among all the producers to whom it belongs the amount of money thus computed. The method of payment provided by the order has two important aspects: (1) the payment of a blended price; (2) the making of so-called "equalization payments."

The blended price.—As it has been explained above, it is not possible to tell whether the particular milk delivered by a particular producer to a handler is disposed of as Class I or as Class II milk. Even in the absence of an order it would be necessary for the handler to pay to each producer a price which represents a composite of the value of all the milk which the handler disposes of in fluid form and the value of all the milk sold as surplus milk. Accordingly, the order provides for payment of a blended price to all producers. blended price represents a blend of the value of both classes of milk and consequently is less than the Class I price and more than the Class II price. Statutory authorization for the payment of a blended price is found in subparagraph (5) of Section 8c of the Act, which provides that an order may establish a method for the payment by all handlers of uniform prices to all producers for all milk delivered, irrespective of the uses made of the milk by the handler.

The directions for computing the blended price are found in Article VII of the order (R. Vol. II, The Master's report contains detailed 47-48. findings with respect to the steps which the Market Administrator took in computing the blended price for each delivery period between August 1, 1937, and December 31, 1937 (R. Vol. II, 154-160). A simplified description of these steps follows: The Market Administrator computed the value of the milk used by each handler by multiplying the quantity of the milk which he disposed of for Class I e purposes by the Class I price and the quantity of milk which he disposed of for Class II purposes by the Class II price. After the Market Administrator had computed the value of the milk disposed of by each handler, he added all of the values so computed for all handlers into one total which was the total amount of money to be distributed to all producers for all the milk which they had delivered in a particular period. The distribution of this total among the producers took into account certain differentials which are provided for in Article VIII of the order (R. Vol. II, 47-48). Statutory authorization for the differentials is found in paragraph (B), subsection (5), Section 8c of the Act. Briefly, the differentials recognize (a) the difference in the cost of transporting milk various distances to Boston and (b) the normal economic advantage enjoyed by producers whose farms are in close proximity to the city. After allowance was

made for the application of the differentials, the total amount of money available for distribution to distributors was divided by the total quantity of milk-delivered, the result being the blended price which was paid to each producer subject to the differentials where applicable to him.

Copies of the pare announcements published by the Market Administrator for each delivery period between August 1, 1937, and December 31, 1937, are printed in the Record (R. Vol. III, 101, 156).

The equalization payments.—The purpose of providing for the payment to all producers of a blended price, reflecting the value of all of the Class II milk as well as the value of all of the Class I milk, is to distribute the burden of the surplus milk equitably over the entire market. The making of the equalization payments is an essential step in the accomplishment of this purpose. The Master's report also contains detailed findings with respect to the operation of the equalization provisions of the order (R. Vol. II, 160, 163). The more important of those findings may be summarized as follows: It has been explained that each handler pays to producers a blended price which is less than the Class I price and more than the Class II price as those prices are fixed in Article IV of the order. As a result, a handler who uses as Class II milk the greater part of the milk delivered to him pays to his producers an amount which is greater than the use value of that milk (which is the value of the milk computed on the basis of the minimum

class prices fixed by Article IV of the order). On the other hand, a handler who uses as Class I milk the larger part of the milk delivered to him pays to his producers less than the use value of that The latter handler, who has paid his producers less than the use value of the milk, is required by paragraph 3, Section 1, Article VII of the order to pay the difference between the use value and the blended price to the Market Ad-The Market Administrator does not ministrator. retain this money but pays it to handlers who, like the first handler described above, are required to pay to their producers more than the use value of the milk which has been delivered to them; and these handlers pay the money so received to their producers. These payments to and from the Market Administrator are so-called "equalization payments." Authority for the payments is found in paragraph (C), subsection (5), Section 8c of the Act. It should be emphasized that the payments do not have the effect of equalizing profits among the several handlers in the market. money involved in the payments is money which represents a part of the value of the milk delivered by producers and which should be distributed among the producers; in other words, payments are merely an important step in the distribution of the total value of the milk among all the producers in the market.

Certain other provisions of the order should be briefly noted. Article IX of the order requires \$.02 per hundredweight from the payments made direct to producers. This money is used for certain valuable marketing services which are performed for producers by the Market Administrator. Those deductions are not made in the case of milk purchased or received from members of a cooperative association which performs such services for its members because performance of the services by the Market Administrator is unnecessary. This provision of the order is authorized by paragraph (E), subsection (5), Section 8c of the Act. These deductions are made from amounts which are owing to producers and therefore represent no additional cost to the handler.*

Section 1 of Article X of the order requires each handler to pay to the Market Administrator not exceeding \$.02 per hundredweight, on all milk delivered to him, as his pro rata share of the expense of administering the order. This provision of the order is authorized by Section 10b (2) of the Act. Article V of the order requires the handlers to make certain reports to the Market Administrator

were paid into court pursuant to the terms of the temporary injunction as modified by the supersedeas of the United States Circuit Court of Appeals. Inasmuch as the charge is for a service to be currently performed by the Administrator and the impounding of the money made it impossible for the services to be currently performed, the District Court directed that these funds should be turned over to the Market Administrator for distribution to the producers from whom the money was withheld (R. Vol. I. 126–127).

with respect to the quantity of milk handled and the purposes for which it is sold or distributed (R. Vol. II, 45). These reports are used to compute the blended price and the amounts of the equalization payments.

VI. THE BUSINESS CARRIED ON BY PETITIONERS

A. H. P. HOOD & SONS, INC., AND NOBLE'S MILK COMPANY

H. P. Hood & Sons, Inc., is a Massachusetts corporation which has its principal place of business in Boston. It operates receiving stations at different points in the States of Maine, New Hampshire, Vermont, and New York. It purchases milk from more than 3,000 producers located in the States of Maine, New Hampshire, Vermont, Massachusetts, and New York. A portion of the milk so purchased is transported to the distributing plant of the petitioner in Boston in interstate commerce and is there processed and then distributed and sold by the petitioner in the Boston mar-Some of the milk purchased by the Hood Company is processed at its country stations outside of Boston and the products are then shipped into Boston. Of the 3,186 producers from whom the Hood Company purchased milk between August 1 to 15, 1937, 902 delivered to plants in the State of Maine; 473 to plants located in the State of New York; 1,367 to plants in the State of Vermont; 371 to plants in the State of New Hampshire; and 73 to the plant at Charlestown, Massachusetts. The

Hood Company also from time to time purchases milk from other handlers and distributes and sells. that milk in the Boston market (R. Vol. II, 212-213).

Noble's Milk Company is a Massachusetts corporation which is a subsidiary of the Hood Company and is operated under the same general policy. It purchases milk from producers located in the State of Vermont who furnish a small proportion of its total supply. It also purchases milk from producers in the Commonwealth of Massachusetts, who furnish the greater proportion of its total milk supply. The milk from Vermont and Massachusetts producers is received and commingled at the plant of Noble's Milk Company at Shelburne Falls, Massachusetts. Noble's Milk Company sells its milk to the Hood Company, which distributes and sells it in the Boston market (R. Vol. II, 215–216).

B. THE WHITING MILK COMPANY

The Whiting Milk Company is a Delaware corporation which has its principal place of business in the City of Boston. It operates receiving stations in New Hampshire, Vermont, and Maine. The Whiting Company also receives milk from producers located in Middlesex and Worcester Counties in the Commonwealth of Massachusetts. The milk from the country receiving stations, as well as the milk purchased in Massachusetts, is ultimately sent to the Charlestown plant of the company from which the company sells the milk

in the Boston area and to some extent in secondary markets. The Whiting Milk Company buys milk from approximately 1,400 producers. From time to time it also purchases milk from other handlers and distributes and sells that milk in the marketing area (R, Vol. II, 226–231).

SUMMARY OF ARGUMENT

I

Neither the Agricultural Marketing Agreement Act of 1937 nor Order No. 4 as amended violates the due process clause of the Fifth Amendment. Petitioner's attack upon the equalization provisions of the order is essentially economic and not legal in character. It is an attack upon the wisdom and effectiveness of a regulatory device which Congress has expressly authorized and which has been adopted by the Secretary of Agriculture after full hearings and after exact compliance with the procedural requirements set up by the statute. "substance, petitioners are arguing that in selecting a regulatory plan Congress made an unwise and ineffective selection. This argument misconceives the nature of the limitations imposed by the Fifth Amendment. The concept of due process does not require this Court to determine questions of legislative wisdom or economic policy. Nebbia v. New York, 291 U.S. 502, 537; Northern Securities Co. v. United States, 193 U. S. 197, 337-338; Labor Board v. Jones & Laughlin, 301 U. S. 1, 46.

The facts with respect to economic conditions in the Boston market show that a market-wide equalization plan is a fair, reasonable and practical method of preventing disorderly marketing conditions in interstate commerce in milk. Petitioners' contention that the equalization provisions take property from one class of persons for the benefit of another class is without merit. The provisions for market-wide equalization are closely analogous to the regulatory plan sustained by this Court in Mulford et al. v. Smith, No. 505, decided April 17, 1939.

II .

The Agricultural Marketing Agreement Act of 1937 contains no unlawful delegation of legislative authority. The Act does not unlawfully delegate legislative power to the Secretary to determine when, where, and to what commodities an order shall apply. The standards set up to guide the Secretary's action are definite and comply with the principles laid down in the decisions of this Court. The statute does not confer unlimited power upon the Secretary to select the terms of an order. Such discretion as is permitted to the Secretary is necessary to provide the necessary flexibility in a regulatory statute which applies to a number of commodities and to different marketing areas. The power to select the terms and conditions to be included in the order is purely a delegation of authority to administer a legislative enactment and not a delegation of the authority to make law.

III

The Secretary of Agriculture in issuing, the amendments to Order No. 4 complied with the procedural requirements set forth in the Agricultural Marketing Agreement Act of 1937. It is true that at the time the amendments were issued the Secretary did not promulgate a new proclamation pursuant to Section 8e as to the base period applicable to the amendments. In not taking this step the Secretary followed his consistent administrative interpretation of the Act. That interpretation should be sustained by this Court. Costanzo v. Tillinghast, 287 U. S. 341; McCaughn v. Hershey Chocolate Co., 282 U. S. 827. The provisions of the statute do not require that a proclamation be issued under Section 8e in connection with the issuance of amendments to an order. The Act merely grants to the Secretary the authority to do so when the circumstances warrant. However, in this case the facts demonstrate that the Secretary has complied with the requirements of the statute regardless of how it is interpreted.

The Secretary's determination that all of the terms and conditions of Order No. 4 as amended would tend to effectuate the declared policy of the Act was supported by the evidence before him. Petitioners have no standing to attack that finding by new evidence or on the basis of wholly a priori reasoning. The Secretary's determination was of such a nature that it is not properly subject to

judicial review. If this Court does consider the question it will be found that the determination is fully supported by the evidence regardless of the scope of the review.

Petitioners, in attacking the referendum used by the Secretary to gather information as to whether the requisite percentage of producers approved the issuance of the amendments to the order, are not entitled to judicial review of the results of that referendum or the manner in which it was conducted. The record before this Court amply demonstrates that the referendum was conducted in accordance with the directions contained in the statute.

In terminating the suspension of Order No. 4, the Secretary complied with the statutory requirements. Properly construed, the provisions of the statute did not require the Secretary to make a finding that the termination of his suspension of the order would tend to effectuate the purposes of the Act. This is particularly the case, where, as here, the suspension of the operation of the order was not accompanied by a finding that the order did not tend to effectuate the purpose of the Act. If, however, the statute required the Secretary to make any determination when he reinstated the order, he fully complied with the statutory require-The form of his order terminating the suspension, and the finding made, when he issued the amendments, that the order as amended would tend to effectuate the purpose of the Act, fully disclosed

the basis of his action and satisfied the procedural requirements of the statute.

TV

Petitioners' contention that the Market Administrator improperly included in the equalization pool milk of persons who were not producers within the meaning of the order is without merit. The asserted error inflicted no damage upon petitioners. The test which the Secretary of Agriculture and the Market Administrator applied to determine what producers should be included in the equalization pool was reasonable and the only practicable test available to him. The test insisted upon by petitioners would admittedly have made enforcement of the order impossible. The Secretary's construction of his own order is controlling in the absence of proof that the construction is arbitrary or unfair. Norwegian Nitrogen Co. v. United States, 288 U.S. 294.

ABGUMENT.

I

THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937 IS A CONSTITUTIONAL EXERCISE OF THE POWER OF CONGRESS TO REGULATE INTERSTATE COMMERCE

The petitioner in Whiting Milk Company v. United States, No. 809, urges that the Agricultural Marketing Agreement Act of 1937 and Order No. 4 as amended, in fixing prices to be paid for milk,

which is shipped in interstate commerce, constitute an invalid exercise of the power to regulate commerce and violate the Tenth Amendment. The general principles of constitutional law applicable to the issues raised by this contention are discussed at pages 93 to 109 of the brief filed by the United States in United States of America v. Rock Röyal Co-operative, Inc., et al., No. 771, and the Court is respectfully referred to that discussion. No additional argument will be made here except to point out briefly the applicability of the most recent pronouncements of this Court to the contentions made by petitioner.

Petitioner's argument does not differ substantially from the views urged upon this Court by the appellants in Currin v. Wallace, No. 275, decided January 3, 1939, and in Mulford et al. v. Smith et al., No. 505, decided April 17, 1939. The decisions of this Court in rejecting those views are a complete answer to petitioner's argument. Mr. Justice Roberts, in speaking for the majority of the Court in Mulford et al. v. Smith et al., supra, said:

This court has recently declared that sales of tobacco by growers through warehousemen to purchasers for removal outside the state constitute interstate commerce. Currin v. Wallace, supra; and see Dahnke-Walker Co. v. Bondurant, 257 U. S. 282, 290; Shafer v. Farmers Grain Co., 268 U. S. 189, 198. Compare Lemke v. Farmers Grain Co., 258 U. S. 50. Any rule, such as that em-

bodied in the Act, which is intended to foster, protect and conserve that commerce, or to prevent the flow of commerce from working harm to the people of the nation, is within the competence of Congress. Within these limits the exercise of the power, the grant being unlimited in its terms, may lawfully extend to the absolute prohibition of such commerce, Champion v. Ames, 188 U. S. 321; Hipolite Egg Co. v. United States, 220 U. S. 45; Hoke v. United States, 227 U. S. 308; Brooks v. United States, 267 U. S. 432; Gooch v. United States, 297 U. S. 124, and a fortiori to limitation of the amount of a given commodity which may be transported in such commerce. The motive of Congress in exerting the power is irrelevant to the validity of the legislation. Commentaries on the Constitution (4th Ed.), Secs. 965, 1079, 1081, 1089.

Petitioner concedes, in effect, that the regulation is a regulation of commerce by admitting that the transaction regulated is the sale of milk "about to be shipped in interstate commerce." That transaction is regulated by fixing the sale price. The necessary implication of the decision of this Court in Milk Control Board v. Eisenberg Farm Products, No. 426, decided February 27, 1939, is that such regulation is within the power of Congress. We submit that the Agricultural Marketing Agreement Act of 1937 and Order No. 4 as amended, are constitutional exercises of that power.

NEITHER THE AGRICULTURAL MARKETING AGREE-MENT ACT OF 1937 NOR ORDER NO. 4 AS AMENDED VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

Petitioners attack the equalization provisions of Order No. 4 as amended on the ground that they violate the due process clause of the Fifth Amendment. The general principles of constitutional law applicable to the issues raised by this contention are discussed at pages 124 to 130 of the brief filed by the United States in United States of America v. Rock Royal Cooperative, Inc., et al., No. 771, and the Court is respectfully referred to that discussion. The argument here will be directed to certain considerations which are pertinent to the particular form in which petitioners have cast their arguments on this point.

Petitioners' contentions strike squarely at the provisions of the statute and are designed to compel the conclusion that the due process clause of the Fifth Amendment forbids the use of the market-wide equalization plan.²¹ Petitioners' objections to the equalization provisions assume two

Petitioners do not contend that the Act did not authorize the Secretary to include the equalization provisions in the order. Nor do they suggest that his action in so doing was arbitrary in the sense that it was without any support in the evidence which was adduced at the hearings held before the promulgation of the order.

forms: (1) That those provisions have no reasonable relation to the legitimate purpose of the statute, and (2) That they take the property of one group for the benefit of another.

The first contention is developed in some detail in the brief of the Hood Company. As there developed, the argument grants the existence of a constitutional power to fix minimum prices, assumes that conditions exist in the Boston market which call for the exercise of that power, and admits that the prices fixed by the order are not "unreasonably high or confiscatory." The petitioner asserts, however, that the evils which the Act was intended to remedy could have been dealt with effectively by an order which fixed minimum prices and provided for equalization on the basis of dealer pools; and that the market-wide equalization provisions are unnecessary to deal with the economic problems which admittedly exist in the Boston market. The petitioner further objects that the equalization provisions of the present order compel

²² The difference between a dealer pool and a market-wide pool is explained on pages 24–26 supra. The difference is not between equalization and no equalization, but between equalizing the sales of the producers delivering to a particular dealer on the basis of that dealer's utilization of his milk, and equalizing all the sales of all producers delivering to all dealers in the market on the basis of the utilization of all the milk so delivered. The distinctive characteristic of dealer-pool equalization is that it makes no attempt to distribute the burden of the surplus milk equitably over the market.

it to subsidize its competitors, encourage marginal dealers, and enable them to remain in business; and prevent the petitioners from paying prices to the farmers as high as it would like to pay.

This argument, whatever its form, is essentially economic and not legal in character. It is an attack upon the wisdom and effectiveness of a regulatory device which Congress has expressly authorized and which has been adopted by the Secretary of Agriculture after full hearings and after exact compliance with the procedural requirements set up by the statute. In short, petitioners are weighing the merits of alternative techniques for dealing with an economic problem, determining that one technique is better than another and concluding, on the basis of that determination, that Congress has made an unwise and ineffective selection.

This entire argument proceeds upon a misconception of the nature of the limitations imposed upon Congress by the Fifth Amendment. The methods which Congress may use to achieve a purpose within its granted powers are varied. One method may be preferable to another, and reasonable men may differ as to the efficacy or fairness of particular regulatory plans and devices. But the choice of methods is a legislative function. Whatever the scope of the Fifth Amendment may be, it does not compel the choice of any one method as against another, nor does it establish some absolute and abstract standard of excellence or wisdom to which regulatory plans and techniques must con-

form at their peril. In applying the concept of due process, this Court has repeatedly said that it has no concern with the questions of legislative wisdom or economic policy. Nebbia v. New York, 291 U. S. 502, 537; Northern Securities Co. v. United States, 193 U. S. 197, 337–338; Labor Board v. Jones & Laughlin, 301 U. S. 1, 46.

The record here affords no basis for the contention that the equalization provisions are capricious, arbitrary, or unreasonable, or that there is no rational basis for regarding them as bearing a real and substantial relation to the legitimate statutory object sought to be obtained. The earlier discussion of the history of the Boston market and of the economic conditions existing therein shows that the presence of a necessary but burdensome surplus of fluid milk depreciated farm prices and created disorderly marketing conditions in interstate commerce in milk in the Boston area.23 The surplus supply is essential; without it the marketing area would not have an adequate supply of milk in seasons when production is low. But the handling of the surplus entails a substantial economic burden, and competitive pressure drives various groups of producers in the market and the different handlers to attempt to avoid any share of that burden. Since a year-round surplus is an inevitable incident of an adequate supply in short seasons, any fair plan designed to deal with marketing con-

²³ See pages 26-33, supra.

ditions should provide for equitable distribution of the burden of the surplus over all of those engaged in the industry.²⁴ That is precisely what the provisions for market-wide equalization de.

The facts disclosed by the record demons rate the essential fairness and reasonableness of the marketing plans proposed since 1930 by various semi-public and private bodies to remedy conditions in the Boston market has contemplated the establishment of a market-wide equalization pool (R. Vol. II, 130–132). For a time in 1933 cooperative organizations, representing by far the greater number of producers supplying the Boston market, voluntarily adopted and followed a marketing plan which involved acceptance of the principle of market-wide equalization (R. Vol. I, 120–121, 132). The fact that, of the 11,493 farmers voting

²⁴ Compare the report of the joint legislative committee appointed by the legislature of New York to consider conditions in the dairy industry in that State, which was before this Court in *Nebbia* v. *New York*, 291 U. S. 502. One of the conclusions of the committee was summarized in this Court's opinion in these words (page 517):

A satisfactory stabilization of prices for fluid milk requires that the burden of surplus milk be shared equally by all producers and all distributors in the milkshed.

²⁵ For additional material with respect to the history and development of marketing plans and of equalization in the Boston market; see Report of Federal Trade Commission on the Distribution and Sale of Milk and Milk Products, House Document No. 501, 74th Congress, Second Session,

in the referendum on the amendments to Order No. 4, 8367 voted in favor of the order is persuasive evidence of the essential fairness of the equalization provisions. Furthermore, some kind of equalization is inevitable whenever milk is marketed on the use-price plan. Petitioners, in effect, concede that equalization is fair when applied solely to the producers delivering to petitioners. But if equalization is fair for all producers delivering to a particular handler, its fairness for all producers delivering to all handlers in the market must be admitted unless it is to be assumed that it is fair and reasonable to select some particular group of producers and compel

pages 13-44, and Relative Prices to Producers under Selected Types of Milk Pools, Stitts and Gaumnitz, Bulletin No. 25, published by the Cooperative Division of the Farm Credit Administration in cooperation with the United States Department of Agriculture.

It is significant that the milk marketing plan adopted in England and Wales pursuant to the provisions of the Agricultural Marketing Act of 1931 (21 & 22 Geo. 5, c. 42) adopts the principle of market-wide equalization. It also provides to a limited degree for equalization between different marketing areas in England and Wales. See The Regulation of Milk Marketing In England and Wales, Steck, published September 1938 for the United States Department of Agriculture.

Because the milk of a particular producer is commingled with the milk of many other producers, the handler does not know to what use the milk of the particular producer is ultimately put. Some kind or an equalization or pooling device is therefore an essential part of any use price plan for purchasing milk, except when a handler is purchasing only for a single use.

²⁶ The Master found (Record, Vol. II, 122):

them to bear the entire burden of the surplus milk. There is no justification for regarding these provisions as an arbitrary device imposed upon the market by governmental decree. They may more properly be described as a device which has been evolved from 20 years of experience in the Boston market and which the majority of the farmers of New England accept because of the lessons taught by that experience.

The facts which have been discussed above destroy petitioners' argument that equalization is arbitrary and unfair and reduce their arguments to bare criticisms of the economic effects or the regulatory plan which the Secretary has adopted. . Criticisms of this kind, no matter how reasonable of themselves, are not a test of compliance with the due process clause of the Fifth Amendment. But if they were, they would be unavailing here because analysis shows that petitioners' criticisms are without substance. These criticisms proceed along two lines: (1) That the provisions deprive certain groups of producers of benefits which they would otherwise enjoy, and (2) That the provisions injure the handlers by compelling them to subsidize their competitors and by preventing them from paying their producers as high a price as they might otherwise pay. Each of these lines of approach involves comparison of the situation existing under the equalization provisions with some other situation. At points in petitioners' argument the situation

chosen for contrast appears to be one in which a federal order fixes minimum prices for farmers and provides for equalization on a dealer pool basis; at other points, one in which the maket is entirely free of regulation of any kind. If the first situation is assumed, it can be shown that the regulatory scheme which petitioners insist the Constitution requires Congress to adopt is arbitrary, unfair, and probably impractical. In the second situation, it can be demonstrated that the benefits, whose destruction the petitioners lament, are entirely illusory.

Let us first consider the situation which would exist under a regulatory plan which fixed minimum prices for the farmer, permitted equalization on a dealer-pool basis, and did not provide for market-wide equalization. Petitioners assert that the effect of the plan would be to prevent the kind of price competition which has heretofore depressed the farm price of milk; and that the plan would thus achieve the only legitimate purpose which the statute was intended to serve. In the past, in the absence of any regulation dealers have competed for the fluid milk market by cutting both the retail price of milk and the price to farmers. Under the regulatory scheme which petitioners propose, the kind of com-

²⁷ In short, this is an argument that the fixing of minimum prices is necessary and proper to achieve the legitimate statutory purpose, but that market-wide equalization is unnecessary. The question of necessity is for the legislature.

petition which involves cutting the farm prices of milk is impossible. Dealers, such as the petitioners, who now have a firm grasp on fluid milk outlets and who enjoy large fluid sales would to that extent be protected against competition. The farmers who now deliver milk to dealers who have small Class I sales would be excluded from the fluid milk market throughout most of the year. Such a regulatory plan would deny to these farmers the power to compete for fluid sales with the chief weapon which has heretofore been available. There is no evidence that the farmers who deliver to these dealers produce milk inferior in quality to that produced by the farmers who deliver milk to the petitioners and other handlers with high Class I sales (R. Vol. I, 97). There is no basis for suggesting that the farmers whose milk is now used chiefly for Class II purposes belong in any different economic class from the farmers who sell to handlers with large Class I sales.28 Despite these considerations, petitioners proffer a regulatory plan which excludes these farmers from the fluid milk market and condemns them to receive a lower price for their milk. And this proffer is made not merely

²⁸ On the contrary the Master found (R. Vol. II, 97):

As to farmers delivering to such stations, no separate class of farmers in the Boston milkshed produces Class II milk.

The discussion of dealer pool equalization in this section of the brief is necessarily directed to conditions in the Boston market. The respondents do not suggest that there may not be conditions in other markets which make application of the dealer pool plan fair and appropriate.

on the basis that the plan is economically wise and desirable but on the additional ground that its adoption is demanded by the provisions of the Constitution.

The injustice of this proposal is apparent when it is remembered that the milk produced by these farmers is required at certain seasons of the year to insure an adequate supply of milk for the market. As it has been previously explained, the variations in production and demand make it necessary that there be a supply of surplus milk in the market at all times (see pp. 27, 28, supra). The supply of milk available for the Boston market is lowest in November. In that month the surplus is between 20% and 25% (see p. 27, supra). The number of cows which will produce this surplus in November will necessarily produce a much larger surplus in other months of the year. It is apparent from the record that it cannot be assumed that any considerable number of farmers now supplying the Boston market could be permanently excluded from that market without substantial risk of impairing the necessary fluid milk supply. For example, in November 1937 there was just enough milk in the market to supply the necessary surplus of 25% (R. Vol. II, 96).

Indeed, the Record here discloses that the petitioners themselves find it necessary to resort at times to the class of producers whose milk they appear to believe is unnecessary in the market. It is conceded that the largest share of the surplus now existing in the Boston market is carried by the cooperative organizations of producers. Throughout the period between August 1 and December 31, 1937, it was necessary for both the Hood and Whiting Companies to purchase considerable quantities of milk from the cooperative organizations operating in the market (R. Vol. II, 215, 231). It may fairly be assumed that these purchases were made because the petitioners could not get an adequate supply of fluid milk from the producers delivering to them.

Thus, although the petitioners' suggested scheme of regulation would deny to a large number of producers supplying milk to the Boston market any share in the fluid milk market throughout most of the year, it would, unless the plan frankly contemplates impairment of an adequate supply of milk, expect these producers to continue to meet the strict and expensive health requirements applicable to the production of fluid milk and otherwise to hold themselves in readiness to supply fluid milk to the market at such times as their milk might be re-The prospects for fulfillment of this expectation can hardly be described as encouraging. No group of producers is likely to continue to produce milk for sale as fluid milk if its members are not to be allowed a share of the fluid milk market. Thus any regulatory plan which proposes that some one group shall bear the entire burden of the surplus in the market, quite apart from being

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unfair and arbitrary, might well be impractical in the long run. Since the purpose of the statute is not to enhance the prices received by a favored group of producers but to establish a marketing plan which will prevent disorderly marketing conditions in interstate commerce and at the same time be fair to all groups of producers and insure an adequate supply of milk, the petitioners' proposed plan can under no circumstances be squared with the declared policy of Congress. Certainly nothing in the concept of due process requires Congress to select a certain class of farmers and handlers and to enact regulation which compels them to assume the entire burden of the surplus milk which is necessary to insure an adequate supply.

If, on the other hand, we assume that there is no regulation whatsoever in the market, the benefits which the petitioners assert the order destroys are iliusory. In the absence of regulation the way is open for the kind of disorderly marketing conditions which the petitioners admit existed in the past and which the statute is intended to prevent. When these conditions exist, the producers delivering to the petitioners cannot expect to receive a price substantially higher than the price paid generally in the market. Nor can the petitioners expect that competitive pressure will always permit them to pay the high prices which they

²⁹ Compare the statement in the Master's report (R. Vol. II, 98): "Each dealer naturally wishes to purchase his milk as cheaply as his competitors."

assert it is in their interest to pay. The Hood Company attempts to demonstrate the injury inflicted upon producers by the equalization provisions by contrasting the blended prices announced by the Market Administrator with the prices which the Hood Company has announced it will pay if it is not compelled to make equalization payments under There is nothing in the record to supthe order. port the assumption implicit in this argument that the Hood Company could pay the prices which it has announced in the absence of the order. On the contrary, the economic history of the market contradicts that assumption and points to the conclusion that the Hood Company was able to anpounce such prices only because the order protected it against the kind of competition which inevitably reduces the fair price of milk. The petitioners' argument on this point assumes a situation in which it is able to take advantage of the benefits of the order without assuming any of the corresponding obligations.*

Finally, petitioners assert that the equalization provisions take property from one class of persons

The argument ignores another matter of some consequence. If the petitioners and the other handlers in the market had complied with the order and their milk had been included in the computation of the blended price, the price announced by the Market Administrator in each of the periods after September 1, 1937, would have been substantially higher. The difference between the blended prices computed on the basis of all of the sales in the market and the blended prices announced by the Hood Company would not be as great as petitioner's argument suggests.

for the benefit of another. This formula lays down no test for invoking the limitations of the Fifth Amendment. As applied by petitioners here it means nothing more than that the effect of the equalization provisions is to increase the financial burden of some persons and to improve the economic situation of others. The same thing might be said of minimum wage statutes, although it is now settled that such legislation does not violate the concept of due process. West Coast Hotel Co. v. Parrish, 300 U.S. 379. With equal force the requirement that handlers pay minimum prices can be described as taking property from them for the benefit of the farmers. Yet the Hood Company in effect concedes that the fixing of minimum prices is consistent with the due process clause, as indeed it must. Nebbia v. New York, 291 U. S. 502. This concession removes any magic which the petitioners' incantation might otherwise possess. If Congress can compel petitioners to pay more for milk than they would otherwise pay (and thus take their . property for the benefit of the farmers), no additional taking is involved in the equalization provisions for they merely effect a distribution of the fund created by the imposition of the minimum prices.31

and No basis exists for asserting that equalization takes any property belonging to the farmers who deliver to petitioners. These farmers have no fixed expectation of any particular price which can be taken from them by regulation. In the absence of regulation they would doubtless receive whatever price petitioners saw fit to pay, the bargaining position of

One who asserts that a statute violates the due. process clause of the Fifth Amendment assumes the burden of demonstrating that the statute is arbitrary, unreasonable, or capricious. That burden is not discharged by proof that the effect of the statute is to confer benefits upon some groups at the expense of others. On the contrary, this Court has repeatedly recognized that when evils to which legislation is addressed are common to an entire industry, the regulation designed to remove those evils may impose burdens upon all groups within the industry even though some of those groups theretofore may have been able, either by reason of their own competence or fortuitous circumstances, to escape the consequences of the evils. Cf. New England Divisions Case, 261 U. S. 184; Mountain Timber Co. v. Washington, 243 U. S. 219; New York Central Railroad Co. v. White, 243 U.S. 188; Noble State Bank v. Haskell, 219 U. S. 104; Abie State Bank v. Bryan, 282 U. S. 765; Dayton-Goose Creek Railway v. United States, 263 U.S.

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the farmers being what it is, as contrasted with that of petitioners. The history of the market suggests that in these circumstances the farmers delivering to petitioners would get prices, if not lower, at least no higher than the blended prices payable under the order.

³² These decisions are discussed in detail on pages 124-129 of brief submitted by the United States in the case of United States of America v. Rock Royal Co-operative, Inc., et al., No. 771. The petitioners attempt to distinguish these cases on various grounds. The asserted distinctions possess vary-

In one of its most recent decisions with respect to the constitutional power of Congress to enect regulatory legislation, this Court sustained the constitutionality of those provisions of the Agricultural Adjustment Act of 1938 33 which provided for the establishment of marketing quotas in interstate commerce in flue-cured tobacco. Mulford et al. v. Smith et al., No. 505, decided April 17, 1939. purpose of that regulation was to remedy disorderly marketing conditions which existed in the interstate marketing of tobacco-conditions which were created by the periodic existence of a surplus supply of tobacco. The particular regulatory plan used involved the fixing of a marketing quota for each farmer and the imposition of a heavy monetary penalty for shipments in interstate commerce in excess of the quota. If, as in that case, Congress can equalize the burden of the surplus of an agricultural commodity by limiting the farmers' right to unrestricted access to the market, it can certainly equalize a similar burden here by permitting unrestricted access to the market and providing a fair method for the equitable distribution of the proceeds of the commodity sold.

ing degrees of merit, but none of them obscures the fact that the statutes upheld served to equalize or distribute in some equitable way the economic burdens incident to the conduct of the industry involved.

³⁵ 52 Stat. 31, as amended March 26, 1938, 52 Stat. 120, April 7, 1938; 52 Stat. 202, May 31, 1938, 52 Stat. 586, and June 20, 1938, 52 Stat. 775; U. S. C. Supp. IV, Title 7, Secs. 1281, et seq.

The statement that property cannot be taken from one class of persons for the benefit of another is doubtless a convenient form of words for describing a conclusion, but it is the statement of a result and not of a reason. The generalization cannot be taken from the context in which it is used in judicial opinions and applied mechanically to other situations involving different legislation and different economic problems." The real issue in each case is whether the purpose which Congress intends to accomplish lies within the scope of its granted power and whether the method which it has adopted appears to bear any reasonable relation to the purpose sought to be achieved. In the case at bar the purpose of Order-No. 4 as amended is to remove disorderly marketing conditions which

³⁴ Petitioners' reliance upon the decisions in Thompson et al. v. Consolidated Gas Utilities Corp. et al., 300 U. S. 55 and Railroad Retirement Board v. Alton Railroad Co., 295 U. S. 330, rests upon this kind of rigid legalism. Those decisions have been distinguished at pages 128-130 of the brief filed by the United States in United States of America v. Rock Royal Co-operative, Inc., et al., No. 771, and elaboration of the discussion there contained is unnecessary. It may be worth while, however, to point out that here we have a situation in which the undesirable economic conditions intended to be remedied arise by reason of competition which ensues from unrestricted access to the fluid milk market. The application of the principle of equalization to such a situation is obviously different from its application to the situation in Thompson et al. v. Consolidated Gas Utilities Corp., where one group had no access to the market and where there was no proof that denial of that access created economic conditions which it was within the power of the state legislature to remedy.

afflict interstate commerce in milk in the Boston market. The constitutionality of that purpose is not seriously contested. The reasonableness of the method used is shown by the lessons of experience, by the obvious efficacy of the method, and by its essential fairness and equity.

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THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937 CONTAINS NO UNLAWFUL DELEGATION OF LEGISLATIVE AUTHORITY

The government's brief in *United States* v. Rock Royal Cooperative, Inc., No. 771, demonstrates (pages 117-119) that the provisions of the Act, requiring the Secretary to find that a specified percentage of producers approve an order, contain no unlawful delegation of legislative power to producers. That point will not be discussed further here.

That brief points out also (pages 109-116) that the Act both states the policy Congress seeks to attain and prescribes standards to guide the Secretary in the attainment of that policy in terms more definite than those of other laws which this Court has sustained in the face of attack on grounds of unlawful delegation of legislative power to administrative officials. The Hood Company, however, urges this latter proposition at some length in its brief. Accordingly, although we believe the point clear, it may be helpful to a full appreciation of the forcelessness of the petitioners' contentions as

applied to this Act if we elaborate somewhat the argument advanced in the Rock Royal brief.

The petitioners rely upon A. L. A. Schechter Corp. v. United States, 295 U. S. 495, and Panama Refining Co. v. Ryan, 293 U. S. 88, only to the extent that they announce a principle. Although asserting that this case resembles the Schechter case more closely than it does the Panama Refining case, the petitioners admit that the means for the attainment of the objective in the Schechter case were undefined and broader than the means available under this Act. Petitioners' elaborate effort to bring this case within the doctrine of those cases, by showing that the objective of parity prices prescribed in this Act is as vague as the generalpurposes of the National Industrial Recovery Act involved in those cases, succeeds only in demonstrating that the standard here is more precise than the objectives and the guides to administrative action sustained by this Court in Hampton & Co. v. United States, 276 U.S. 394.

The petitioners' claim, in summary, is merely that the objective of parity prices for milk, although apparently precise, is illusory and therefore inadequate as a guide to the administrative determinations required by the Act as to (1) when an order shall be issued; (2) the commodities and regions to which it shall apply; and (3) the terms which it shall contain. On this premise the petitioners base their attack principally upon the third of these contentions—that because the Act gives

the Secretary a limited choice of methods for attaining this objective rather than confining him to but one set of invariable terms, it confers upon him a discretion so broad as to constitute an unlawful delegation of legislative power. This argument rests largely, but not entirely, upon the adequacy of the declared policy as a standard. Following the outline of the petitioners' argument, we shall discuss first its adequacy as a guide to when, where, and to what commodities, an order shall be applied.

A. THE ACT CONTAINS NO UNLAWFUL DELEGATION OF LEGISLATIVE POWER TO DETERMINE WHEN, WHERE, AND TO WHAT COMMODITIES AN ORDER SHALL APPLY

Section 8c (2) lists six agricultural commodities and their products as appropriate subjects of regulation. The petitioners say the Act fails to tell the Secretary how he shall choose one of these commodities for regulation or determine when he shall make the regulation effective or where it shall apply. But Section 8c (3) makes it clear that when the Secretary has reason to believe that the issuance of an order will tend to effectuate the declared policy with respect to any of the specified commodities or a product thereof, he shall give due notice and an opportunity for hearing upon a proposed order. This commences the process of issuing an order. Section 8c (4) provides that if he finds upon the evidence introduced at the hearing that the issuance of the order and all of its terms

and conditions will tend to effectuate the declared policy he shall issue the order. These provisions clearly fix the standard for ascertaining the time when an order shall be issued and the commodity to which it shall apply."

The Secretary has constantly available current information regarding all of the factors involved in the determinations which these sections require to be made in initiating orders. If at any time this information discloses that facts exist which show a reasonable likelihood that the issuance of an order containing terms specified in the Act would tend to accomplish, with respect to any one of the specified commodities in an established marketing area, the purposes specified in Section 2 of the Act, as modified by Sections 8e and 8c (18), the Secretary is required to hold hearings, make findings and, if the findings support the issuance of an order, to issue an order. The intention of Congress is clear that the order shall be issued when, and only when, the facts exist which will justify its issuance and the Secretary's duty is clear to keep informed as to the facts and to act when the appropriate facts appear.

A similar, though less precisely expressed, procedure for initiating administrative action was held an adequate standard for determining when action should be taken and the commodities to which it

⁸⁵ Read in conjunction with other provisions of the Act . to which we shall refer hereafter (see p. 73-84) these provisions indicate equally clearly the regions to which the orders shall apply and the terms it shall contain.

should apply in Hampton & Co. v. United States, 276 U.S. 394 at page 405. As this Court pointed out in the opinion in that case:

There was no specific provision by which action by the President might be invoked under this Act, but it was presumed that the President would through this body of ad-

³⁶ The provision considered in that case was section 315 of the Flexible Tariff Act of 1922, c. 356, 42 Stat. 858, 941, which provided as follows:

"Sec. 315. (a) That in order to regulate the foreign commerce of the United States and to put into force and effect the policy of the Congress by this Act intended, whenever the President, upon investigation of the differences in costs of production of articles wholly or in part the growth or product of the United States and of like or similar articles wholly or in part the growth or product of competing foreign countries, shall find it thereby shown that the duties fixed in this Act do not equalize the said differences in costs of production in the United States and the principal competing country he shall, by such investigation, ascertain said differences and determine and proclaim the changes in classifications or increases or decreases in any rate of duty provided in this Act shown by said ascertained differences in such costs of production necessary to equalize the same. Thirty days after the date of such proclamation or proclamations such changes in classification shall take effect, and such increased or decreased duties shall be levied, collected, and paid on such articles when imported from any foreign country into the United States or into any of its possessions (except the Philippine Islands, the Virgin Islands, and the islands of Guam and Tutuila): Provided, That the total increase or decrease of such rates of duty shall not exceed 50 per centum of the rates specified in Title I of this Act, or in any amendatory Act.

"(c) That in ascertaining the differences in costs of production, under the provisions of subdivisions (a) and (b) of this section, the President, in so far as he finds it prac-

visers keep himself advised of the necessity for investigation or change, and then would proceed to pursue his duties under the Act and reach such conclusion as he might find justified by the investigation, and proclaim the same if necessary. [Italics supplied.]

It is clear from the Act that the Secretary has no unfettered discretion as to when an order shall be issued with respect to a particular commodity, but on the contrary is directed to issue an order whenever the appropriate facts appear.

ticable, shall take into consideration (1) the differences in conditions in production, including wages, costs of material, and other items in costs of production of such or similar articles in the United States and in competing foreign countries; (2) the differences in the wholesale selling prices of domestic and foreign articles in the principal markets of the United States; (3) advantages granted to a foreign producer by a foreign government, or by a person, partnership, corporation, or association in a foreign country; and (4) any other advantages or disadvantages in competition.

"Investigations to assist the President in ascertaining differences in costs of production under this section shall be made by the United States Tariff Commission, and no proclamation shall be issued under this section until such investigation shall have been made. The commission shall give reasonable public notice of its hearings and shall give reasonable opportunity to parties interested to be present, to produce evidence, and to be heard. The commission is authorized to adopt such reasonable procedure, rules, and regulations as it may deem necessary.

"The President, proceeding as hereinbefore provided for in proclaiming rates of duty, shall, when the determines that it is shown that the differences in costs of production have changed or no longer exist which led to such proclamation, accordingly as so shown, modify or terminate the same.

Petitioners claim also that the Act does not make clear where such orders shall apply. But Section 8c (11) (A) prohibits the Secretary from issuing an order applicable to all marketing areas unless he finds that the issuance of separate orders applicable "to the respective regional production areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy." Obviously, in this provision Congress recognized that it was dealing with commodities having established regional markets practices which were too well defined to require particular description. The intention of Congress is clear that the orders are to be applied to these preexistent marketing areas and are not to be applied nationally unless the declared policy cannot effectively be carried out by regional orders for the established areas. This intention is emphasized by Section 8c (11) (C) which requires differentiation in the terms of orders applicable to different areas in o der to "give due recognition to the differences in production and marketing of such commodity or product in such areas." The fact that Congress refrained from unnecessarily encumbering the Act with a recital of the geographical boundaries of each of many recognized marketing areas for the six commodities and their products is evidence merely of a sensible economy of words, not of an

unlawful delegation of legislative power. Congress was writing a law to be administered by experts acquainted with agricultural marketing. To describe the areas was obviously unnecessary to an adequate expression of the congressional intention. Like the determination of the time when an order should be issued and the commodities to which it should apply, the determination of the area to which it shall apply is to be determined primarily by reference to the declared policy but with regard to local conditions and to the relative effectiveness of regional and national orders. These are surely matters for expert administrative determination.

But the petitioners contend that whatever definiteness there might be in these standards for selection of the commodity to be subject to an order, the time when the order shall be effective, and the area to which it shall apply are illusory because the objective toward which the orders are directed and the effectuation of which guides these determinations appears to the petitioners to be difficult of application. Petitioners' argument amounts to no more than this. Although the petitioners' description refrains from minimizing these alleged difficulties, the argument would not be persuasive even if they all existed in the degree petitioners imply.

A similar argument was made with great force and at great length in the attack made upon the provisions of Section 315 of the Flexible Tariff Act in the Hampton case. In that case the Court pointed out that despite the difficulties of application the objective was clear, intelligible, and sustained the delegation as a valid device of practical government under the Constitution, saying (276 U. S. at p. 404);

* * It seems clear what Congress intended by § 315. Its plan was to secure by law the imposition of customs duties on articles of imported merchandise which should equal the difference between the cost

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²⁷ The brief of the petitioner in that case, No. 242, October Term 1927, asserted at length in the text and the appendices the difficulties inherent in determining such factors as "difference between cost of production at home and abroad" (pp. 30-36) cost of joint products (pp. 36-42) and "any other advantages or disadvantages in competition" (pp. 47-52). See also Larkin, The President's Control of the Tariff, especially pages 112-150, in which are fully described the difficulties encountered by the Tariff Commission in applying the standards provided by Section 315 of that Act; in ascertaining "the differences in cost of production of articles wholly or in part the growth or product of the United States and of like or similar articles wholly or in part the growth or product of competing foreign countries"; in finding the "differences in cost of production in the United States and the principal competing foreign country;" in determining which were, at any particular time, the principal competing countries; in determining the time for which the comparative cost study should be made; in the selection of production areas; in evaluating the weight to be given to costs of marginal producers; in determining whether to use weighted average of bulk line costs; in breaking down joint costs; in determining what goods are "like" or similar; in ascertaining proper allowance for loss and depreciation, labor expenses and transportation as elements of cost; and

of producing in a foreign country the articles in question and laying them down for sale in the United States, and the cost of producing and selling like or similar articles in the United States. be that it is difficult to fix with exactness this difference, but the difference which is sought in the statute is perfectly clear and perfectly intelligible. Because of the difficulty in practically determining what that difference is, Congress seems to have doubted that the information in its possession was such as to enable it to make the adjustment accurately, and also to have apprehended that with changing conditions the difference might vary in such a way that some readjustments would be necessary to give effect to the principle on which the statute proceeds. To avoid such difficulties. Congress adopted in § 315 the method of describing with clearness what its policy and plan was and then authorizing a member of the executive branch to carry out this policy and plan, and to find the changing difference from time to time, and to make the adjustments necessary to conform the duties to the standard underlying that policy and plan.

otherwise applying the standard. With these practical administrative difficulties apparent the Court found no objection to the adequacy of the standard as a guide to administrative action. They are infinitely greater difficulties than any which the petitioners suggest in the basic parity formula in this case.

The difficulties of applying the parity price formulae, which form the basic objective sought to be attained through orders issued under this Act, are obviously less than those involved in adjusting tariff rates under the Flexible Tariff Act.

The factors to be considered under Section 8c (18) in varying the objective from this mathematical parity, "feed supplies" and "feed prices" and "other economic conditions which affect market supply and deman dfor milk or its products" are factors capable of ascertainment through the information available to the Secretary and the effect of which upon the reasonableness of the prices and upon the maintenance of adequate quantities of milk can readily be determined. They express a clear congressional policy and point out the factors to be taken into account in determining the intended variation of the basic parity standard.

The same is true of the limiting factors expressed in Section 2 of the Act. Moreover, as pointed out in our brief in *United States* v. Rock Royal Cooperative, Inc., pp. 113-114, the latter factors merely impose a restraint upon the Secretary's action and tend to diminish the rigor of any regulation which might be imposed in their absence.

The petitioner claims that the objective and governing standard to be ascertained on the basis of these facts is not capable of ascertainment because certain of the factors involved are "unknown and unknowable" and "exist only in the abstract." If this be true (and we believe it clearly is not true) the petitioners' argument proves too much. If these factors, which Congress directs the Secretary to consider in issuing an order, are unknown and unknowable to the Secretary whose sources of information are the best available and are constantly at hand, the remedy which the petitioners appear to suggest of having Congress itself, although lacking the constant sources of information available to the Secretary, determine these "unknown" and "unknowable" facts would create an intolerable result and make the Act wholly unworkable.

Mere difficulty of finding the requisite facts does not invalidate a standard which, as this standard does, expresses a clear basic congressional policy and prescribes directions and limits to guide the action of the administrative officer required to carry out that policy.

B. THE ACT CONTAINS NO UNLAWFUL DELEGATION OF LEGISLATIVE POWER TO SELECT THE TERMS OF AN ORDER

The petitioners contend that, assuming that the objective which guides the initiation of orders with respect to particular commodities and particular regions is adequate to point the way for such action, nevertheless the Act is invalid because the Secretary is given choice of terms to be included in orders, or, as petitioners say, a choice of the

means of regulation. As we have pointed out in our brief in United States v. Rock Royal Cooperative. Inc., the statute prescribes in Sections Sc (5) and 8c (7) specific terms which orders may The petitioners suggest that these terms provide the basis for variations by the Secretary in the method of accomplishing the Act's objective so great as to constitute an unlawful delegation of legislative power. The argument fails to recognize that the choice permitted among even the limited terms specified in those sections is not capricious or unrestrained. It is clear from Section 8c (4) that before issuing an order the Secretary is required to find and to set forth in the order that all of the terms of the order will tend to effectuate the declared policy of the Title with respect to the commodity in the region to which the order by its terms applies. And Section 8c (11) (C) makes it clear that Congress intends the Secretary to select from among the specified terms, different terms applicable to different marketing areas as he "finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas." The petitioners urge that any of the terms would serve to accomplish the declared policy under the corditions which exist in any of the areas to which orders might apply. Congress apparently felt differently. The choice of terms was given, as is apparent from Section 8c (11) (C), in order to enable the Secretary to adapt the orders to local

differences in conditions, which Congress deemed prevalent, in the several areas to which orders might apply. Even if the petitioners' judgment as to the need for different remedies for different conditions were presumptively more sound than that of Congress, it provides no basis for overthrowing this Act. Congress has concluded that different conditions in different areas may require different remedies to accomplish the declared policy most effectively. The wisdom of this conclusion is not for this Court to decide on the mere representation of the petitioners that the conclusion is unwise. Congress has given the Secretary a choice of remedies and has instructed him to apply those remedies in the manner necessary to accomplish a clearly ascertained purpose with due regard to differences in the local conditions in which the Act is to be applied. This is the essence of delegation to an administrative officer of authority to find the facts and apply the law to the facts found. Cf. J. W. Hampton, Jr., & Co. v. United . States, 276 U.S. 394.

Petitioners seek to illustrate their objection by a comparison between the effectiveness of a dealer equalization pool and a market-wide pool (Section 8c (5) (B)). Petitioners claim that the maintenance of prices approaching the parity objective is accomplished by the minimum price provisions alone and that the declared policy does not guide the choice of equalization methods because the policy is directed only to the purchasing power of

commodities, whereas the equalization devices, they say, affect not the maintenance but only the distribution of that purchasing power. Aside from the fact that this argument ignores the purpose to assure adequate supplies of wholesome milk (Sec. 8c (18); this argument falls far short of a complete analysis. It should be noted at the outset that, whatever may be the effect of the minimum price requirements upon handlers, the distribution of the differences in the price among producers in order to equalize the return to all producers for the same quantity of milk takes from the handlers no profits which they would receive independently of such equalization provisions. With class prices in effect without equalization the dealers would get none of the money which, through the equalization provision is redistributed among producers. equalization pool merely provides the means for apportioning equally among the producers the prices paid for milk of similar quality irrespective of how a particular producer's milk happens to be used.

As is illustrated in our brief in *United States* v. Rock Royal Cooperative, Inc. (see pp. 106-109, 124-130 and the footnote, p. 107 of that brief), a classified price plan without equalization is vulnerable to competition between producers for the market for milk in higher price classes. The equalization plan is essential to the effectiveness of the price plan. It is inaccurate to say in these circumstances

that "the alternative equalization devices have to do only with the distribution of that purchasing power." They accomplish that distribution, but in doing so they form an integral and necessary element of the regulation necessary to accomplish the approach toward parity prices which the Act contemplates. In this sense, they are as essential to the accomplishment of the declared policy as the minimum-price provisions themselves. Neither could be effective independently. Therefore, the choice of two available methods of equalization cannot be divorced from the accomplishment of the Act's declared purpose. It cannot be said that Congress gave the power of capricious choice, unrelated to the declared policy in authorizing the Secretary to find, if the facts warrant the finding, that, as applied to conditions in one marketing area, equalization through a dealer pool would be more effective to support the maintenance of the prescribed minimum prices than market-wide equalization, whereas under conditions prevailing in other local areas, with different marketing practices and different competitive conditions, marketwide equalization might be effective where dealer equalization would fail. Petitioners' argument is based on an obvious failure to appreciate the essential interrelation between the minimum-price provisions and the equalization provisions as complementary elements both necessary to the effective accomplishment of the Act's purposes. Once their essential character is observed, the basic unsoundness of the petitioners' claim that the choice between the two methods is irrelevant to the accomplishment of the declared policy becomes obvious and the fact becomes apparent that the declared policy is a plainly relevant primary standard to guide the Secretary to the choice of the term appropriate to the local conditions.

The same is true as to the other terms. The Secretary's only leeway is to determine on the basis of evidence introduced at a hearing at which all parties interested have opportunity to be heard, which of the limited number of terms prescribed by the Act will, in the circumstances prevailing on the market to which the order is to apply, serve to make the order effective to accomplish the declared policy. This is purely delegation of authority to administer a legislative enactment, not a delegation of authority to make law.

Petitioners seek to draw a contrast between the standards prescribed in this Act and those considered by the Court in Mulford v. Smith, No. 505, decided April 17, 1939. There are obvious differences between the two statutes, differences reasonably related to differences in the problem dealt with. But here, as in that case, it is apparent that Congress has not delegated power to choose the policy but rather has outlined a comprehensive program to be administered. Congress here has fixed the policy and directed that it be carried out when and where facts are found to exist which require the prescribed action. Petitioners

say that in this Act Congress has merely fixed the ultimate goal, and add an intricate expression of doubt even as to that. We believe it is clear that the Act has not only fixed the goal but has specified when and where the Secretary shall act with respect to each commodity subject to regulation and has specified, with clarity amply sufficient to guide administrative action, what that action shall be.

IV

THE AMENDMENTS TO ORDER NO. 4 WERE VALIDLY PROMULGATED BY THE SECRETARY OF AGRICULTURE IN COMPLIANCE WITH THE PROVISIONS OF THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

A. THE SECRETARY DID NOT ERR IN OMITTING TO ISSUE A NEW PROCLAMATION PURSUANT TO SECTION SE WHEN HE ISSUED THE AMENDMENTS TO THE ORDER

Under the provisions of Section 2 (1) of the Act, the base period applicable to all orders relating to milk is August 1909 to July 1914. However, Section 8e of the Act provides:

In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the bas period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the pur-

poses of such marketing agreement or order, shall be the post-war period, August 1919–July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.

On January 25, 1936, the Secretary found and proclaimed that the purchasing power of the milk in the greater Boston marketing area during the base period August 1909 to July 1914 could not be satisfactorily determined from available statistics in the Department of Agriculture, but that the purchasing power of such milk could be satisfactorily determined from available statistics in the Department of Agriculture for the base period August 1919 to July 1929; and that the base period August 1919 to July 1929 should be the base period used for the purpose of the execution of a marketing agreement and the issuance of an order (R. Vol. II, 6-7). There is no dispute that in accordance with this proclamation the period August 1919 to July 1929 was established as the applicable base period for the purpose of issuing Order No. 4 in its original form.

When the Secretary promulgated the amendments to Order No. 4 he did not issue a new proclamation in regard to the base period, nor did he change or modify in any respect the base period used for the purposes of the order. Petitioners contend that since the Secretary concededly used

the same base period, August 1919 to July 1929, for the purposes of the amendments as he used for the purposes of the original order, the amendments are invalid because no new proclamation was issued in connection therewith. Petitioners reach this conclusion by interpreting Section 8c (17) to mean that no amendment to an order which uses the August 1919–July 1929 base period can be promulgated unless a new determination is made and a new proclamation issued pursuant to Section 8e.

1. The procedure followed by the Secretary was in accord with his considered administrative interpretation of the statute

The respondents submit that the provisions of the statute did not require the Secretary of Agriculture to make a new determination as to the base period when he amended Order No. 4. But before the merits of petitioners' argument on this point are considered, it should be pointed out that the Secretary did not inadvertently omit any procedural step in connection with the issuance of the amendments to Order No. 4. By not issuing a new proclamation as to the base period in connection with the amendments, the Secretary conformed to the procedure consistently followed in amending similar orders issued under the provisions of Section 8c enacted by Congress on August 24, 1935 (49 Stat. 750) and reenacted in the Agricultural Marketing Agreement Act of 1937. .Consequently, it must be assumed that the procedure

followed by the Secretary was in accord with his considered administrative interpretation of the provisions of the statute.

Since the enactment of Sections 8e and 8c (17) [Act of August 24, 1935; 49 Stat. 750], the Secretary has issued 35 orders regulating the handling of agricultural commodities. In the 13 orders regulating milk the Secretary, pursuant to Section 8e, has proclaimed that either all or a portion of the period August 1919—July 1929 should be used as the base period." The Secretary has issued similar

³⁸ These milk orders, the dates of their proclamations, and the dates of their issuance, are as follows: Order No. 3, for St. Louis, Mo., proclamation dated January 28, 1936, order issued January 30, 1936 (not contained in Federal Register which began publication on March 14, 1936); Order No. 4, for Boston, Mass., proclamation dated January 25, 1936, order issued February 7, 1936 (not in Federal Register); Order No. 5, for Fall River, Mass., proclamation dated April 3, 1936 (1 Fed. Reg. 112), order issued ... April 15, 1936 (1 Fed. Reg. 200); Order No. 11, for the District of Columbia, proclamation dated September 8, 1936 (1 Fed. Reg. 1829), order issued September 17, 1936 (1 Fed. Reg. 1401); Order No. 12, for Dubuque, Iowa, proclamation dated August 17, 1936 (1 Fed. Reg. 1125), order issued September 17, 1936 (1 Fed. Reg. 1373); Order No. 13, for Kansas City, Mo., proclamation dated June 17, 1936 (1 Fed. Reg. 607), order issued November 3, 1936 (1 Fed. Reg. 1722); Order No. 20, proclamation dated September 24, 1937 (2 Fed. Reg. 1943), order issued November 9, 1937 (2 Fed. Reg. 2443); Order No. 22, for Cincinnati, Ohio, proclamation dated March 22, 1938 (3 Fed. Reg. 630), order issued April 27, 1938 (3 Fed. Reg. 817); Order No. 27, for New York, N. Y., proclamation dated August 5, 1938 (3. Fed. Reg. 1957), order issued August 5, 1938 (3 Fed. Reg. 1945); Order No. 30, for Toledo, Ohio, proclamation dated

proclamations in connection with 15 orders regulating commodities other than milk.** In connec-

July 30, 1938 (3 Fed. Reg. 1893), order issued September 3, 1938 (3 Fed. Reg. 2169); Order No. 32, for Fort Wayne, Ind., proclamation dated October 27, 1936 (1 Fed. Reg. 1690), order issued October 11, 1938 (3 Fed. Reg. 2464); Order No. 34, for Lowell-Lawrence, Mass., proclamation dated January 21, 1939 (4 Fed. Reg. 403), order issued February 6, 1939 (4 Fed. Reg. 601); Order No. 35, for Omaha-Council Bluffs, Neb., proclamation dated March 10, 1939 (4 Fed. Reg. 1198), order issued March 31, 1939 (4.

Fed. Reg. 1408).

39 Order No. 2, regulating California citrus, proclamation dated November 15, 1935, order issued January 4, 1936 (not in Federal Register); Order No. 6, regulating western. Washington vegetables, proclamation dated February 28, 1936 (not in Federal Register), order issued April 29, 1936 (1 Fed. Reg. 301); Order No. 7, regulating Florida citrus, proclamation dated March 10, 1936 (not in Federal Register), order issued May 4, 1936 (1 Fed. Reg. 334); Order No. 8, regulating Southeastern watermelons, proclamation dated February 28, 1936 (not in Federal Register), order issued May 8, 1936 (1 Fed. Reg. 389); Order No. 9, regulating California deciduous, proclamation dated May 23, 1936 (1 Fed. Reg. 448), order issued May 23, 1936 (1 Fed. Reg. 448); Order No. 10, regulating Colorado vegetables, proclamation dated March 14, 1936 (not in Federal Register). order issued August 4, 1936 (1 Fed. Reg. 1003); Order No. 14, regulating Utah onions, proclamation dated December 4. 1936 (1 Fed. Reg. 2100), order issued April 22, 1937 (2 Fed. Reg. 740); Order No. 15, regulating Texas citrus, proclamation dated July 9, 1937 (2 Fed. Reg. 1188), order issued July 9, 1937 (2 Fed. Reg. 1188); Order No. 16, regulating Oregon cauliflower, proclamation dated March 5, 1937 (2) Fed. Reg. 502), order issued July 19, 1937 (2 Fed. Reg. 1253); Order No. 24, regulating California and Arizona cantaloupes, proclamation dated May 17, 1938 (3 Fed. Reg. 959) order issued May 17, 1938 (3 Fed. Reg. 960); Order No. 25, regulating Arkansas grapes, proclamation dated July 15, 1938 (3 Fed. Reg. 1741), order issued July 15;

tion with various ones of the 28 orders employing either all or a portion of the August 1919–July 1929 base period, 12 amendments have been issued. In only one instance did the Secretary issue a proclamation relative to the base period in connection with the amendment and that was necessary because the Secretary changed the portion of the base period employed in the original order. In amending Order No. 15, regulating Texas citrus fruits, the Department of Agriculture, after issuing the original order, acquired statistics which made more feasible the use of a different portion of the base

^{1938 (3} Fed. Reg. 1741); Order No. 26, regulating Washington prunes, proclamation dated July 19, 1938 (3 Fed. Reg. 1779), order issued July 19, 1938 (3 Fed. Reg. 1779); Order No. 29, regulating honey bees, proclamation dated September 2, 1938 (3 Fed. Reg. 2163), order issued September 2, 1938 (3 Fed. Reg. 2149); Order No. 31, regulating Western fresh pears, proclamation dated October 7, 1938 (3 Fed. Reg. 2489), order issued October 7, 1938 (3 Fed. Reg. 2439); Order No. 33, regulating Florida citrus, proclamation dated February 17, 1939 (4 Fed. Reg. 989), order issued February 17; 1939 (4 Fed. Reg. 971).

⁴⁰ Order No. 2, amended June 5, 1936 (1 Fed. Reg. 549); Order No. 3, amended April 13, 1936 (1 Fed. Reg. 185), and March 29, 1937 (2 Fed. Reg. 616), and March 31, 1939 (4 Fed. Reg. 1404); Order No. 4, amended July 28, 1937 (2 Fed. Reg. 1331), and January 13, 1939 (4 Fed. Reg. 249); Order No. 5, amended March 29, 1937 (2 Fed. Reg. 614); Order No. 7, amended October 24, 1936 (1 Fed. Reg. 1662); Order No. 11, amended November 17, 1936 (1 Fed. Reg. 1979); Order No. 12, amended February 24, 1937 (2 Fed. Reg. 354); Order No. 15, proclamation dated September 10, 1938 (3 Fed. Reg. 2222), amendment dated September 10, 1938 (3 Fed. Reg. 2222); Order No. 20, amended August 15, 1938 (3 Fed. Reg. 2015).

period August 1919-July 1929. Accordingly, the Secretary amended the order and in connection therewith proclaimed the different period (3 Fed. Reg. 2222). This is in no way inconsistent with the settled policy of issuing no new proclamation in connection with amendments which do not entail a departure from the base period employed in the original order.

It is a well-established principle of statutory construction that settled administrative interpretation is entitled to great weight when a court is called upon to construe a statute. United States v. Chicago North-Shore R. Co., 288 U. S. 1, 13-14; Hewitt V. Schultz, 180 U. S. 139, 156-157; Costanzo v. Tillinghast, 287 U.S. 341, 345. This doctrine is particularly applicable to the instant case because between the time of the enactment of Sections &c · (17) and 8e in the Act of August 24, 1935, and the reenactment without amendment of those same provisions on June 3, 1937 (Agricultural Marketing Agreement Act of 1937), the Secretary promulgated seven amendments to orders which had been issued on the August 1919-July 1929 base period. (See fn. 40, supra, p. 89). In not one of these seven instances did the Secretary issue a new proclamation in connection with the amendment. Although Congress must be presumed to have known of the administrative construction of the statute, it did not see fit to revise that construction. Mr.

Justice Stone, speaking for a unanimous court, in McCaughn v. Hershey Chocolete Co., 283 U. S. 488, said (p. 492-493):

The reenactment of the statute by Congress, as well as the failure to amend it in the face of the consistent administrative construction, is at least persuasive of a legislative recognition and approval of the statute as construed. See National Lead Co. v. United States, 252 U. S. 140, 146. We see no reason for rejecting that construction.

Again, in Costanzo v. Tillinghast, 287 U. S. 341, Mr. Justice Roberts said (p. 345):

The failure of Congress to alter or amend the section, notwithstanding this consistent construction by the department charged with its enforcement, creates a presumption in favor of the administrative interpretation, to which we should give great weight, even we doubted the correctness of the ruling of the Department of Labor. Fawcus Machine Co. v. United States, 282 U. S. 375, 378; McCaughn v. Hershey Chocolate Co., 283 U. S. 488, 492.

It is submitted that in view of the consistent administrative interpretation of the procedural requirements of the statute in connection with amendments and the congressional acquiescence in that interpretation, this Court should not invalidate the amendments by adopting an interpretation of Section 8c (17) not required by its language.

2. The Act does not require that there be a determination and proclamation as to the base period in connection with amendments to orders

Petitioners' construction of the statute cannot be supported on the language of Section 8e. By its terms that section provides that if, in connection with the issuance of any marketing agreement or order, the Secretary makes the proclamation authorized thereby, the base period fixed by such proclamation shall be the base period applicable to that marketing agreement or order. In the absence of further statutory directions, if the Secretary proclaimed a base period, the mandate of Congress would require that the base period selected under Section Se should thereafter be applicable to the order regardless of how many times it was amended. It would necessarily follow that all amendments made pursuant to Section 8c (1). which authorizes the Secretary to issue and, from time to time, to amend orders, would perforce have to be based on the base period applicable to the order. In that case the Secretary would have substartially less discretion with respect to the amendment of orders than he had with respect to their issuance. It was to obviate this difficulty that Section 8c (17) was inserted in the Act. That section provides in part-

The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders: Provided * * . *.

Despite the plain import of the language of Section 8c (17) the petitioners refused to regard it as merely conferring upon the Secretary, in connection with the issuance of amendments, the same discretion which he possesses in connection with the issuance of orders. They assert, on the contrary, that the section in effect imposes an additional limitation upon the Secretary, and that it requires him to issue a new proclamation pursuant to Section Se in connection with any amendment if the order as amended is based on any period other than August 1909 to July 1914 which is prescribed in Section 2 (1) of the Act. The meaning which the petitioners thus attempt to-read into Section 8c (17) is not expressly required by the language of that section, is inconsistent with the plan of the statute, and is contrary to the intent of Congress.

In the original Agricultural Adjustment Act of 1933, the base period August 1909 to July 1914 was fixed as a guide for the Secretary of Agriculture in carrying out the authority vested in him to restore the purchasing power of farmers (Act of May 12, 1933; c. 25, Title I, Sec. 2, 48 Stat. 32). No deviation from this standard was permitted regardless of unavailability of satisfactory statistics as to prices of a particular commodity in a particular market for that period. In the amendments of August 24, 1935, Congress attempted to correct the obvious difficulties created

by this inflexible rule. Section 8e was added to the statute vesting in the Secretary discretionary authority, in the absence of satisfactory statistics for the August 1909 to July 1914 base period, to adopt as a base period all or such portion of the period August 1919 to July 1929 for which satisfactory statistics were available (Act of Aug. 24, 1933; c. 641, Sec. 8e, 49 Stat. 762). This section must be regarded as designed to confer additional discretion upon the Secretary and not to limit or confine discretion already conferred upon him.

The terms of Section 8e, however, permitted the powers therein granted to be exercised only in connection with the making of a marketing agreement or the issuance of an order. Strictly interpreted. this language would prevent the Secretary from exercising the powers granted by Section 8e if he were issuing an amendment to an order and not an entirely new order. If, for example, the statistics for the base period used pursuant to either Section 2 (1) or Section 8e in issuing an order subsequently proved to be unsatisfactory and the Secretary desired to adopt a different base period, it would be impossible to take this step by amending the order. To achieve this result it would be necessary to terminate the order and to issue a completely new order.

Congress endeavored to avoid this result by negativing the possibility of Section 8e's being interpreted as leaving a gap in the additional authority granted to the Secretary. This was done by pro-

viding in Section 8c (17) that the discretion conferred by Section 8c could be exercised in connection with amendments to orders, as well as orders. The logical purpose of this provision is to permit the Secretary, in connection with such amendments, to exercise his discretionary power under Section 8c to change the base period originally used in connection with an order.

Petitioners err in assuming that Section 8e is a limitation on the power of the Secretary to issue orders and that by Section 8c (17) the limitation is made applicable to the Secretary's power to amend such orders. When the sections are read as a part of the entire scheme embodied in the Act, it is clear that the purpose of each of these sections is to vest additional discretionary authority in the Secretary and not to limit his powers. Section 8e permits the Secretary, in connection with the issuance of an order, to modify the inflexible base period fixed by Section 2 (1). Without more, the Secretary, by acting or not acting under provisions of this section at the time of issuing an order, would exhaust the authority to modify the base period insofar as the particular order is concerned and the base period so determined would be mandatory as to all amendments. However, by Section 8c (17), the Secretary is given the further discretion to invoke Section 8e in connection with the issuance of an amendment and thus to change, when the circumstances warrant, the base period which has originally been made applicable to the order.

The petitioners' argument assumes that Section 8e, which was concededly inserted in the Act to extend the Secretary's discretion, is referred to in Section 8c (17) solely for the purpose of limiting his discretion. This assumption tends to defeat the very purpose for which Section 8e was added to the Act. The petitioners' argument also rests upon the premise that a determination made pursuant to Section 8e is valid only for an order as originally issued, and that once the order has been amended the prior determination has no application, at least if the amendment affects in any way the prices fixed This contention disregards the fact in the order. that the statute plainly contemplates that there shall be a difference between orders and amendments to orders; and that the Secretary is intended to have the power to amend orders without holding hearings or making determinations with respect to those provisions of an order which he does not intend to amend. Unless this clear-cut statutory distinction between orders and amendments to orders is to be abandoned, the statute must be construed as permitting the Secretary to amend an order without a new determination as to the base period, so long as the amendment does not involve any change or modification of the base period itself.

The construction which we urge is clearly consonant with the grant of authority contained in Section 8e. That section contemplates the exercise of an informed administrative judgment on a question that is hardly susceptible to review (see *infra*

pp. 99-100). It is not to be supposed that Congress intended by Section 8c (17) to make the provisions of Section 8e a part of a ritual which the Secretary was required to perform regardless of the fact that no useful purpose would be served by doing so. The petitioners attempt to avoid this conclusion by suggesting that Congress may have intended to require a new determination whenever an amendment to an order was issued, to insure that the Secretary would periodically reexamine the available statistics in the Department of Agriculture. If Congress had intended to require any such periodic reexamination, it doubtless would have done so in clear and unequivocal language. thermore, there is no warrant in the statute for the suggestion that Congress believed any such direction to be necessary. It is more reasonable to believe that Congress acted upon the assumption that the Secretary would conscientiously discharge his duties; that he would constantly be aware of the changes and improvements in the statistics collected by his Department; and that when developments or changes in those statistics required or permitted a change in the base period, the Secretary, irrespective of other considerations, would make a new determination.41

⁴¹ Petitioners suggest that between the promulgation of Order No. 4 and its amendment, certain statistics with respect to the pre-war prices of milk became available to the Secretary; that these statistics were an improvement upon the statistics available when the Secretary promulgated Order No. 4; and that therefore he should have reexam-

It is not unlikely that the Secretary might find it necessary to amend several times in a single year the prices fixed in an order and the amendments might involve changes of only a few cents. Such amendments might be occasioned, for example, by the necessity for conforming to the other guiding standards fixed in Section 2 (1) or by changes in the purchasing power of the commodity caused by changes in prices of other commodities, or by the necessity for not exceeding the limits fixed in Section 2 (2). If the original order was issued on a base period fixed under Section 8e and petitioners are right in their interpretation of the statute, the Secretary would be required to make a determination and to issue a proclamation prior to the issuance of each amendment regardless of the fact hat there was no occasion for, and he had no intention of, changing the base period. To accept this construction of the Act is to transform what was intended to be an exercise of considered administrative judgment into a meaningless formality. Reading Section 8e and Section 8e (17) together as a grant of discretionary power necessary to overcome practical obstacles to the performance of administrative duties, it is apparent that there is no justification for adopting the construction urged by petitioners.

ined the statistics. This suggestion is not supported by the record. The statistics to which petitioners refer did not become available to the Secretary subsequent to the amendment of Order No. 4. They were the same statistics which were available at the time of the promulgation of the order. This question is discussed in Appendix A to this brief.

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3. If the statute requires a new determination and proclamation, the Secretary has satisfied the requirement by making the determination and by ratifying and adopting the original proclamation

If the statute should be interpreted as requiring that there be a determination and proclamation in connection with an amendment which is based on all or part of the period August 1919 to July 1929, the Secretary has, on the facts of this case, satisfied the statutory requirements. The purpose of having a base period for an order is to fulfill the requirement that there must be a standard to guide administrative judgment. Section 8e of the Act provides that, whenever, in connection with the issuance of an order, the Secretary finds it necessary to use a base period other than the period fixed by Section 2 (1), he must make a determination and issue a proclamation. The determination which he is required to make is as to the availability of satisfactory statistics in the Department of Agriculture. In making this determination, the Secretary exercises administrative discretion. He must determine, first, what statistics are available in his Department and, second, which of the available statistics are satisfactory. The authority thus vested in the Secretary is not unlike the authority given to the Director of the Mint to estimate, and to the Secretary of the Treasury to proclaim, the value of foreign coins; or the authority given to the Secretary of the Interior to make determinations as to public lands; or the authority given to the Secreship status of Indians; or the authority given to the Comptroller of the Currency to determine the necessity for stock assessments in the case of insolvent banks. In all of these instances, the courts have held that such determinations are exercises of administrative discretion which are final and cannot be reviewed by the courts. Hadden v. Merritt, 115 U. S. 25; Riverside Oil Company v. Hitchcock, 190 U. S. 316; West v. Hitchcock, 205 U. S. 80; Adams v. Nagle, 303 U. S. 532. It follows that the Secretary's determinations under Section 8e are exercises of administrative discretion not reviewable by the courts.

In this respect those determinations are radically different from the findings involved in such cases as Mahler w. Eby, 264 U. S. 32; Atchison Ry. v. United States, 295 U. S. 193, 202; United States v. Chicago, M., St. P. & P. Ry., 294 U. S. 499; Florida v. United States, 282 U. S. 194, which are cited in petitioners' briefs. In those cases the administrative finding was required as a condition precedent to administrative action, and the finding itself and the evidence upon which it rested, could be reviewed by the courts. In relying upon these decisions petitioners have ignored the distinction between an executive determination which does nothing more than disclose the basis upon which action is taken and a formal administrative finding required to be made after a hearing and upon the basis of evidence.

The only apparent reason for requiring the Secretary to issue a proclamation is to assure that a court which is called upon to review the order will know what base period the Secretary has found it necessary to use as a standard on which to base his administrative action. Petitioners concede that the Secretary made the determination and, in connection therewith, issued the proclamation prior to the promulgation of original Order No. 4. They insist, however, that this original determination and proclamation cannot be carried over to the amendments. We concede that if the statute is to be interpreted as petitioners insist it must be, it is then encumbent on the Secretary to make the determination again. However, if the determination is again made, we submit that the requirement of a proclamation may be satisfied in any manner sufficient to inform the courts as to what determination the Secretary has made. For example, the Secretary might issue a new statement or proclamation, or he might breathe new life into his original proclamation by ratifying and adopting it. That the Secretary did enough to make known to everyone that he was using the period August 1919 to July 1929 in connection with the amendments is unquestioned. Petitioners argue that this is true; the Secretary's findings in connection with the amendment clearly demonstrate the fact; and It would seem that this alone would satisfy the requirement of a proclamation unless some particular verbalistic magic must be used.

Petitioners will no doubt insist that the mere making known of the fact that a particular base period is being used in connection with the amendments does not satisfy the statutory requirement that the Secretary must proclaim or announce that he has gone through certain mental processes in deciding to adopt the base period. This contention can be supported only on one of two theories—(1) That the Secretary did not go through the mental processes which are a prerequisite to arriving at the result or, (2) That there are words of art by which the Secretary must give objective evidence of his subjective processes.

If petitioners urge that subjectively the Secretary did not actually make the determination provided for in Section 8e, there is no basis whatsoever for their argument. Petitioners have neither alleged nor attempted to prove that the Secretary failed to exercise his deliberate administrative judgment in the manner set forth in Section 8e. For the reasons hereinafter stated we submit that the facts demonstrate that the Secretary properly made the determination and proclaimed the fact. But for present purposes that is beside the point because, in the absence of unequivocal proof to the contrary, it must be presumed that the Secretary performed the duty laid upon him by the statute. Bank of United States v. Dandridge, 12 Wheat. 69-70; R. H. Stearns Co. v. United States, 291 U. S. 54, 64; Pacific States Co. v. White,

296 U.S. 176. As stated in United States v. Chemical Foundation, Inc., 272 U.S. 1, 14-15:

And it is insisted that the orders were induced by misrepresentation and were made without knowledge of the material facts.

The presumption of regularity supports the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties.

* * Under that presumption, it will be taken that Mr. Polk acted upon knowledge of the material facts.

If, on the other hand, petitioners base their objection on the lack of a proclamation, their contention, in the last analysis, is that there are words of art which the Secretary must use. Assuming that to be the case, we submit that the Secretary did use such language—not by issuing a new proclamation, but by ratifying and affirming his first proclamation. There can be no question but that the original proclamation contains all of the necessary phraseology in such clear and unequivocal terms as to satisfy the rule in United States v. Chicago, M. & St. P. & P. Ry., 294 U. S. 499, and the other cases cited in petitioner Hood's brief (R. Vol. II, 6-7). It is hardly conceivable that petitioners will contend that the Secretary was not entitled to satisfy the requirement of a proclamation in connection with the amendments by ratifying and affirming the original proclamation. As is plainly indicated by the decisions of this Court, no words of art and no rigid form is required to accomplish a ratification. Cf. Swayne & Hoyt, Ltd. v. United States, 300 U. S. 297; Isbrandtsen-Moller Co. v. United States, 300 U. S. 139. It is enough that there be a sufficient indication of the intent to ratify. In this case the intention to ratify and affirm is plain on the face of the findings made by the Secretary in connection with the amendments (R. Vol. II, 46-49). When the Secretary promulgated the amendments to Order No. 4 he made the following finding (R. Vol. II, 48):

Whereas, the Secretary finds upon the evidence introduced at the hearing upon such proposed amendment, said findings being in addition to the findings made upon the evidence introduced at the hearing on said order, said original findings being herewith ratified and affirmed by the Secretary save only as such findings are in conflict with the findings hereinafter set forth:

It would seem that the foregoing statement evidences a clear intention on the part of the Secretary to ratify all findings made in connection with the original order, including the proclamation as to the base period. However, petitioners point to the fact that the Secretary's language, strictly interpreted, refers to findings made upon evidence introduced at the hearing on the original order. From this they conclude that the proclama-

tion cannot be referred to because it was not made upon evidence introduced at the original hearing. But this conclusion rests entirely upon conjecture. All of the statistics available in the Department of Agriculture relative to the purchasing power of milk in the Boston market for both the August 1909 to July 1914 and the August 1919 to July 1929 base periods were put in evidence at the original hearing on December 10, 11, and 12, 1935, and further evidence in regard to the base period prices was received at the hearings." The procla-

In the material presented by Mr. Miller were tables running from 1909 to 1935 showing by months the average price received by farmers for all milk sold in each of the States Maine, New Hampshire, Vermont, and Massachusetts. These tables are printed as Appendix A to this brief.

It will be noted that these price series are the same as those printed in the Record and referred to in petitioners'

⁴² At the hearings held in connection with the promulgation of original Order No. 4, Mr. Paul Miller, an economist of the Department of Agriculture, appeared and offered in evidence a treatise containing economic material with respect to the Boston milk market which had been collected and prepared by the Dairy Section of the Agricultural Adjustment Administration of the Department of Agriculture (Appendix A to Master's report, pp. 7-20, Exhibit 2; R. Vol. II, 6). In describing a part of this document, Mr. Miller said, "Now let me present briefly what data we have on the parity price situation" (Appendix A to Master's report, pp. 8-9; R. Vol. II, 6). Later in the hearings, Mr. Miller introduced supplementary tables containing more complete information and stated that these represented "such information as we have been able to gather on prices paid by farmers by months in a period of years that begins in some cases with 1909" (Exhibit A to Master's report, pp. 20-21; R. Vol. II, 6).

mation as to the base period was not made until January 25, 1936 (R. Vol. II, 6). Consequently it may be fairly said that all of the facts necessary for making the proclamation were put in evidence more than a month prior to the time that the proclamation was made. The conclusion that evidence received at the hearings was the basis on which the findings as to the base period were made is strengthened by the fact that in every other instance in which it has been necessary to issue a proclamation in connection with the issuance of an order the Secretary has not issued the proclama-

brief (R. Vol. III, 206-209). The material which Mr. Miller presented contained various other tabulations of prices, including a table showing the Class I price from 1919 to 1985 and a table showing the Class II price from 1921 to 1985 (Appendix A to Master's report, Exhibit 7, Exhibit 2, pp. 36, 39, 40, 45; R. Vol. II, 6). It also contained a table of index numbers necessary for computing parity prices (Appendix A to Master's report, Exhibit 2, p. 11; R. Vol. II, 6).

In addition to the material introduced by Mr. Miller onbehalf of the Department of Agriculture, one of the witnesses, appearing as a representative of producer organizations, introduced price statistics (Appendix A to Master's report, Exhibit 33; R. Vol. II, 6). This witness also testified at some length as to what base period the Secretary should adopt in connection with the proposed order and testified that a higher price than that ultimately adopted by the Secretary was justified on the basis of prices prevailing during the August 1909 to July 1914 period (Appendix A to Master's report, pp. 39-46; R. Vol. II, 6). Obviously, the evidence was given and received on the assumption that the Secretary would make the determination as to the base period on the basis of "evidence introduced at the hearing." tion until after the trings on the proposed order.
(See fn. 39, p. 185, sepra.)

Regardless of whether the finding or the ratification quoted above refers literally to the original base period proclamation, it certainly was intended to cover that proclamation. The court below, taking this view of the question, held as follows (R. Vol. I, 123);

I think that the construction urged by the defendants is too narrow and technical. When the Secretary promulgated amended Order No. 4, he ratified and affirmed the original "findings made upon the evidence introduced at the hearings on said Order."

Plainly, he intended to ratify every finding that had been made in promulgating his original Order save only as they might conflict with the findings of the amended Order. (See paragraph 15 of the master's report.) A fair reading of the amended Order would warrant the conclusion that he affirmed and ratified his finding as to the unavailability of statistics for the pre-war period. This is sufficient compliance with Section 8e of the Act.

As pointed out above, there is no technical requirement as to the manner in which this action must be accomplished. It is enough that the Secretary intended his original finding to stand. We submit that the Secretary satisfied every requirement of the statute.





B. THERE IS NO MERIT IN PETITIONERS' ATTACK UPON THE DETERMINATIONS MADE BY THE SECRETARY AND APPROVED BY THE PRESIDENT UNDER SECTION 8C (9) OF THE ACT

The original order and amendments thereto were put into effect under the provisions of Section 8c (9) which govern the effective date of orders issued without a marketing agreement. That section provides that such orders "shall become effective in the event that the Secretary of Agriculture, with the approval of the President. determines" (1) that the refusal or failure of handlers to sign a marketing agreement tends to prevent the effectuation of the declared policy of the Act; (2) that the issuance of the order is the only practical means of advancing the interests of producers pursuant to the declared policy of the Act; and (3) that the issuance of the order is approved or favored either (a) by two-thirds of the producers who, during a representative period, were engaged in the production of the commodity for sale in the marketing area; or (b) by producers who, during a representative period, produce twothirds of the volume of such commodity sold in the marketing area.

In connection with the issuance of the original order and again in connection with the amendments to the order, the Secretary, with the written approval of the President, found and proclaimed (1) that the refusal or failure of the handlers to sign a marketing agreement did tend to prevent the

effectuation of the declared policy of the Act; (2) that the issuance of the order was the only practical means of advancing the interests of producers in accordance with that declared policy; and (3) that the issuance of the order was approved by more than two-thirds of the producers who, during a representative period, had engaged in production of the commodity for sale in the marketing area (R. Vol. II, 7-9, 44-45).

Petitioners do not question the power of Congress thus to delegate to the Secretary of Agriculture and to the President the authority to determine the effective date of the order. It is not contended that the Secretary failed to make the required determination in proper form; nor that the President failed to approve the determination; nor that the determination was contrary to fact. No question is raised in regard to the Secretary's determination that the refusal or failure of handlers to sign the marketing agreement tended to prevent the effectuation of the declared policy of the Act. No question is raised as to the determination that the issuance of the order was the only practical means of effectuating the declared policy. The only issue which appellants raise is in regard to the Secretary's determination that the issuance of the order was approved by the requisite percentage of producers engaged in producing the commodity for sale in the marketing area during the representative period. Petitioners have neither alleged nor attempted to prove that the order was not approved

by the requisit number. They rely entirely on certain objections to the manner in which the Secretary obtained the information upon which he based his determination.

1. The determination made under Section 8c (9) and approved pursuant thereto by the President is not subject to judicial review

The determination that the refusal or failure of handlers to sign a marketing agreement tends to prevent the effectuation of the declared policy of the Act, and the determination that the issuance of the order is the only practical means of advancing the interests of producers in accordance with that declared policy necessarily require the exercise of discretionary judgment which is essentially legislative in character and not properly subject to judicial review. Williamsport Wire Rope Company v. United States, 277 U. S. 551; Pacific States Company v. White, 296 U. S. 176; and the dissenting opinion of Mr. Justice Cardozo in Panama Refining Company v. Ryan, 293 U. S. 388, 448.

Certainly Congress need not have required that any other facts be determined as a condition pursuant to making an order effective. However, Congress did require, as a third condition, that the Secretary should determine that the issuance of the order was approved by at least two-thirds of the producers who, during a representative period, had produced the commodity for sale in the marketing area. It is difficult to perceive any reason why this

determination—merely because it appears to be made in regard to a more definitely ascertainable fact—should be more susceptible to judicial review than the other determinations with which it is coupled. This view is supported by the fact that this last determination is combined in a single subsection of the statute with the determination that the issuance of the order is the only practical means of advancing the interests of producers pursuant to the declared policy of the Act.

Section 8c (9) indicates on its face that Congress did not intend that any of the determinations made thereunder should be subject to judicial review. No notice or hearing is provided, and the determinations are not required to be made upon evidence. Furthermore, in this single instance Congress required that the determination of the Secretary be approved by the President. the courts should presume to review the determination of the Secretary after it has been approved by the President, then Congress has required the President to perform a futile act. The obvious purpose of requiring such approval is to supply the safeguard which might otherwise have been supplied by authorizing judicial review. We submit that the approval of the President suffices to obviate the necessity for judicial review. As stated in the dissenting opinion of Mr. Justice Cardozo in Panama Refining Company v. Ryan, 293 U.S. 388, 447:

The President, when acting in the exercise of a delegated power, is not a quasijudicial officer, whose rulings are subject to review upon certiorari or appeal (Chicago Junction Case, 264 U.S. 258, 265; cf. Givens v. Zerbst, 255 U.S. 11, 20), or an administrative agency supervised in the same way. Officers and bodies such as those may be required by reviewing courts to express their decision in formal and explicit findings to the end that review may be intelligent. Florida v. United States, 282 U.S. 194, 215; · Beaumont, Sour Lake & Western Ry. Co. v. United States, 282 U.S. 74, 86; United States v. Baltimore & Ohio R. Co., post, p. 454. Cf. Public Service Commission of Wisconsin v. Wisconsin Telephone Co., 289 U.S. Such is not the position or duty of the President. He is the Chief Executive of the nation, exercising a power committed to him by Congress, and subject, in respect of the formal qualities of his acts, to the restrictions, if any, accompanying the grant, but not to any others. One will not find such restrictions either in the statute itself or in the Constitution back of it. The Constitution of the United States is not a code of civil practice.

To say that the express approval by the President of the United States is to be treated as an irrelevant gesture which lends no sanctity to a discretionary exercise of administrative judgment, is to attribute to Congress the intention of burdening the President with meaningless and trivial duties.

Neither the statute nor the Constitution requires this result. We submit that determination of the Secretary as approved by the President is not open to judicial review.

Petitioners will no doubt insist that the determination as to producer approval should be treated differently from the other determinations made pursuant to Section 8c (9) because the Act provides a method by which the facts underlying the determination may be found. This method is set forth in Section 8c (19) which provides:

For the purpose of ascertaining whether the issuance of an order is approved or favored by producers, as required under the applicable provisions of this title, the Secretary may conduct a referendum among producers. The requirements of approval or favor under any such provision shall be held to be complied with if, of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. Nothing in this subsection shall be construed as limiting representation by cooperative associations as provided in subsection (12). [Italies supplied.]

The above section is not a limitation upon the powers and duties of the Secretary. It is a grant of authority, permissive in character, which allows the Secretary to use a particular method in gathering information on which to base his adminis-

trative judgment. If there is to be any review of this information by the courts, that review should be for the sole purpose of determining whether the information thus collected furnishes a rational basis for the Secretary's determination. Rochester Telephone Corp. v. United States, No. 481, decided April 17, 1939.

2. The referendum was conducted in accordance with the provisions of the act

The Act does not prescribe the procedure for conducting a referendum. The only references in the statute which in any way indicate the procedure to be followed are to the following facts: (1) That the referendum is to be conducted among producers; (2) That the approval of two-thirds of the producers participating in the referendum shall be considered as satisfying the requirements as to approval; and (3) That cooperative associations shall be permitted to express the approval of their members. The details as to the manner in which the referendum may be conducted are left to the discretion of the Secretary. Any regulations prescribed by the Secretary pursuant to this authority is not open to question unless it can be demonstrated that the regulations were "so entirely at odds with fundamental principles * * * as to be the expression of a whim rather than an exercise of judgment." A. T. & T. Co. v. United States, 299 U. S. 232, 236-237.

Petitioners' entire argument is based upon their disagreement with the Secretary as to what is meant by "a referendum among producers." It is not disputed that the referendum was conducted "among producers" in the literal sense. Petitioners, in seeking to vitiate the referendum, urge upon this Court a different interpretation of the word producer from that adopted by the Secretary. conducting the referendum, the Secretary considered as producers those persons who, during a representative period (May 1937), delivered milk to a station, "which station, in that month, shipped some part of its products to the marketing area as milk or cream and was approved by one or more of the health authorities in the marketing area" (R. Vol. II, 202). Petitioners insist, in the alternative, that this test either (1) denied a large number of persons the privilege of voting, or (2) permitted a large number of persons to vote who. should have been denied that privilege. Since the term "producers" is not defined in the statute, petitioners attempt to find an implied definition based on their conception of the intent of Congress. order to support their alternative inconsistent arguments, they are compelled to forego reaching any conclusion as to what the intent was and are driven to the position that Congress must have intended a different definition from that adopted by the Secre-· tarv.

Unless the definition adopted by the Secretary was so plainly erroneous as to be the arbitrary expression of a capricious whim, petitioners cannot prevail. The facts in this case demonstrate beyond the shadow of a doubt that the definition adopted by the Secretary was not only reasonable, but was the only satisfactory definition which he could have chosen.

Under the Secretary's definition the class of persons who were considered as producers for the purpose of voting on the amendments to the order was the same as the class of persons who, before and after the amendments, were considered as producers eligible to participate in the equalization pool established by the order. The terms and provisions of the order and the amendment affected only those producers. Consequently, the Secretary considered that only those producers were entitled to express an opinion on whether the order should be amended. This would seem to be a most reasonable decision.

The first test contained in the definition required that it be determined whether the producer delivered milk to a receiving station during the representative period. The purpose of this requirement was to determine what persons were actually engaged in producing milk. Petitioners do not quarrel with this part of the definition. The second test required that it be determined whether the plant

to which the producer delivered was approved by the local health authorities and had sold some part of its product in the marketing area during the representative period. The purpose of this requirement was to determine whether the producer was delivering to a plant which was a lawful source of fluid milk supply for the marketing area and was actually engaged in shipping some of its product to that market. Petitioners' objections center on this portion of the definition. The reasonableness of this test is discussed elsewhere in this brief. On the basis of that discussion, we submit that the Secretary adopted the only feasible test.

Petitioners insist, first, that the Secretary's requirement was too restricted because they construe the Act as requiring the Secretary to open the referendum to every producer whose milk ultimately finds its way to the Boston market in any form. To support this argument they refer to the Master's findings that there were a large number of producers in the south and middle west who delivered to plants which were not approved for the sale of fluid milk in the marketing area but which were supplying cream to the Boston market. As petitioners point out, these producers are located in IIlinois, Indiana, Kansas, Michigan, Missouri, Ohio, Tennessee, and Wisconsin (Petitioner Whiting's brief, p. 41). If petitioners had been able to adduce evidence as to the location of producers engaged in producing milk which ultimately reached the Boston market in the form of butter, cheese, skim-milk

powder, candy, etc., they would have been able to argue that the referendum should have been conducted on a nation-wide scale if not an international scale. The short answer to petitioners' argument is that the commodity regulated by the order is fluid milk available for the Boston market. Consequently, the Secretary limited the referendum to producers of that commodity.

Anticipating the weakness of their first position, petitioners revert to the argument that the Secretary's definition was too broad and as a result a number of persons voted who were actually ineligible. This argument is premised on the fact that if any part of the product of a plant, which was approved for distribution and sale of fluid milk, shipped to the marketing area, the producers delivering to that plant were considered as eligible to participate in the referendum. From this petitioners conclude that a number of unqualified producers not engaged in producing the commodity for sale in the marketing area were allowed to participate.

First, petitioners insist that if the only product shipped to the marketing area was cream, then the producers were not producing milk for sale in the marketing area. But these producers were delivering milk to plants that were approved for the distribution and sale of fluid milk in the marketing area (R. Vol. II, 202). Obviously, this milk con-

stituted the potential supply of fluid milk for the area. This is shown by the fact that while in May twenty-six of the plants which shipped part of their product to the marketing area shipped only cream; in November and December, the season of short supply, every plant which shipped any part of its product to the marketing area shipped some fluid milk in at least one of the delivery periods (R. Vol. III, 170–171). It would have been grossly unfair to formulate a definition which would exclude producers delivering to plants which were sources of supply when the milk was needed but which happened to have no market for their milk in fluid form during the test period.

Next, petitioners indulge in a series of involved computations designed to illustrate that a number of producers produced milk which never reached the Boston market during the representative period. This argument is based on the fact that some of the plants to which producers participating in the referendum delivered, shipped a relatively small percentage of their product to the marketing area. As bointed out above, the milk at such plants is a potential source of supply. It is impossible to segregate any producer or group of producers delivering to a particular plant and say that the milk or product of the milk delivered by that producer or group of producers did not ultimately reach the marketing area. As found by the Master (R. Vol. II, 97).

When a farmer delivers his milk to a receiving station qualified to ship fluid milk to the Boston market, neither he nor the handler to whom the milk is delivered knows how much of that particular milk is to be sold as Class I and how much is to be sold as Class II milk nor is the farmer ever informed as to the use which is made of the particular milk which he delivers.

In view of this fact, it was neither unreasonable nor unfair for the Secretary to consider every producer delivering to a plant, approved for the shipment of fluid milk, which shipped any part of its product to the marketing area as a producer of part of that product. Granting, arguendo, that this test is not perfect, it is nevertheless the only practical test.

As a final argument, petitioners urge that a number of producers voted who did not possess certificates of registration issued pursuant to Chapter 94. Section 16A to Section 16I of the General Laws of Massachusetts. The previous discussion in this section suffices to show that the referendum was conducted among persons who were engaged in producing the commodity for sale in the marketing Plainly, such persons are "producers" within the meaning of the Act. The pertinency of the certificate provisions contained in the Massachusetts statutes to the definition of the term "producer" has been discussed elsewhere in this brief and need not be reiterated. Even if it be assumed that the Massachusetts law is in some way pertinent to the definition of producer in the order, that law cannot be read as restricting the class of persons

upon whom voting privileges are conferred by Congress.

Finally, the primary requirement of the statute in this respect is that the Secretary find that the issuance of the order is favored by the requisite number of producers. There is no requirement the Secretary must use a referendum to determine this fact. Section 8c (19) merely provides that the Secretary "may conduct" a referendum for that purpose. If it be assumed that petitioners are correct in asserting that the referendum was void, the question still remains as to whether what the Secretary did furnished an adequate basis for his determinations. Petitioners have not even attempted to prove that if the Secretary had adopted the rules which they advocate, the result would have been different. In the absence of such proof, there is no reason for concluding that the Secretary's determination did not have an adequate basis in fact.

- C. THERE IS NO MERIT IN PETITIONER'S ARGUMENT THAT THE ORDER IS NOT AUTHORIZED BY THE STAT-UTE BECAUSE ITS TERMS AND CONDITIONS HAVE NO SUBSTANTIAL TENDENCY TO EFFECTUATE THE PUR-POSES OF THE ACT
- 1. Petitioner's argument is premised upon an erroneous assumption as to the proper scope of judicial review

The Whiting Milk Company argues that "the terms of Order No. 4 as amended are not authorized by the Agricultural Marketing Agreement Act

of 1937 because they have no substantial tendency to effectuate the purposes of the Act." This argument is not based on the contention that the terms of the order are not provided for in the Act, but rests entirely on the assertion that the primary finding made by the Secretary pursuant to the mandate of the statute is contrary to fact.

Section & (4) of the Act provides:

After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

Pursuant to this section, the Secretary, in connection with the issuance of the original order, made the finding which is set forth in the order, that the issuance of the order and all of the terms and conditions thereof would tend to effectuate the declared policy of the Act (R. Vol. II, 10, 15). Furthermore, when the Secretary amended the order, he expressly found that the order as amended, and all of its terms and conditions, would tend to effectuate the declared purpose of the Act (R. Vol. II, 46, 49). Petitioner brushes aside

⁴²⁰ This issue is not raised by H. P. Hood & Sons, Inc.

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these findings made, after notice and hearing and upon evidence by the expert .dministrative tribunal to whom Congress committed the determination with the statement, "We assume it was based on some sort of testimony introduced at the hearings held by the Secretary." No effort is made to attack the findings on the basis of the evidence before the Secretary. In fact, petitioner's attack is not even based on evidence taken at the trial. Curiously enough, petitioner ignores all of the evidence as to the manner in which the order operated during the five months between its effective date and the commencement of the hearing before the Master whole argument depends upon a priori reasoning as to certain results which the petitioner asserts must necessarily follow from the provisions which the order contains. In the last analysis, petitioner is seeking to have this Court substitute its judgment for that of the Secretary.

It is difficult to conceive of a rule that would result in more complete usurpation by the judicial branch of duties committed to an administrative officer. The argument is premised on the theory that this Court should ignore the administrative finding and determine de novo whether the order in its operation will effectuate the purposes of the Act. The power to determine that question was lawfully delegated by Congress to the Secretary of Agriculture. The very nature of the question makes it

extremely doubtful if the Court should attempt to review the Secretary's determination. Williamsport Wire Rope Co. v. United States, 277 U. S. 551; Pacific States Co. v. White, 296 U. S. 176; and see dissenting opinion of Mr. Justice Cardozo in Panama Refining Co. v. Ryan, 293 U. S. 388, 448.

But if the determination is reviewable at all, it should be reviewed solely for the purposes of determining whether or not there was evidence before the Secretary to support his findings. This Court said, in Rochester Telephone Corporation v. United States, No. 481, decided April 17, 1939:

Having found that the record permitted the Commission to draw the conclusion that it did, a court travels beyond its province to express concurrence therewith as an original question. "The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." Mississippi Valley Barge Line Co. v. United States, 292 U. S. 282, 286-287; Swayne & Hoyt, Ltd. v. United States, 300 U. S. 297, 303, et seq.

Since petitioners do not challenge the sufficiency of the evidence to support the Secretary's finding that all of the terms and conditions of the order will effectuate the declared policy of the Act, they present no justiciable issue to this Court. 2. The Secretary's finding that all of the terms and conditions of the order would tend to effectuate the purposes of the act is the kind of finding which is not properly the subject of judicial review

By the terms of Section 8c (3) of the Act, the Secretary of Agriculture is authorized whenever he "has reason to believe that the issuance of an order will tend to effectuate the declared policy" of the Act to give "notice of and an opportunity for a hearing upon a proposed order." This section contemplates that a proposal embodying terms which may properly be included in an order shall be offered to interested parties so that they may present their views and place before the Secretary such evidence as may be deemed relevant to the proposal. The hearing thus provided is in the nature of a legislative hearing such as might be held by a committee of Congress in regard to a proposed statutory enactment. The proposal upon which the hearing is held is a proposal for the establishment of a general rule that will govern the future conduct of all persons engaged in a certain industry in a particular locality. In this sense the order differs from orders of a quasi-judicial nature such as Workmen's Compensation Orders (see Crowell v. Benson, 285 U.S. 22), or administrative orders directed against a single individual (see Interstate

Commerce Commission v. Illinois Central R. R. Co., 216 U. S. 452). The proposed order on which the hearing is held and the final order may be more aptly described as being of a general quasi-legislative character (Pacific States Co. v. White, 296 U. S. 176).

Section 8c (4) of the Act provides that the Secretary may issue an order if he finds upon the evidence introduced at the hearing that the issuance of the order and all of the terms and conditions thereof will tend to effectuate the declared policy of the Act. This finding is an expression of the considered judgment of an administrative expert, fully advised by evidence, as to whether the order will carry out the policy fixed by Congress. The finding does not relate to definitely ascertainable existing facts but is an expression of a legislative judgment combining as opinion as to the future with decisions with respect to policy. As was said in Williamsport Wire Rope Co. v. United States, 277 U. S. 551, 559:

The soundness of the judgment exercised by the individual or body to whom the task was confided would depend largely upon the extent both of the knowledge of the special subject possessed and of the experience had in dealing with this particular class of problems. The conclusions reached would rest largely upon considerations not entirely susceptible of proof or disproof.

Mr. Justice Cardozo, in his dissenting opinion in *Panama Refining Company* v. *Ryan*, 293 U. S. 388, 448, pointed out:

Discretionary action does not become subject to review because the discretion is legislative rather than executive * * Investigation resulting in an order directed against a particular person after notice and a hearing is not to be confused with investigation preliminary and incidental to the formulation of a rule.

The order here involved is not unlike the order before this Court in Pacific States Co. v. White, 296 U. S. 176. In that case, it was contended that a court should review an order of an administrative official issued pursuant to a statute authorizing him to fix standard containers for berries offered for sale in the State of Oregon. Mr. Justice Brandeis, in rendering the unanimous opinion of this Court, said (p. 186):

It is contended that the order is void because the administrative body made no special findings of fact. But the statute did not require special findings; doubtless because the regulation authorized was general legislation, not an administrative order in the nature of a judgment directed against an individual concern.

If orders of this character may be issued by an administrative tribunal without requiring special

findings of fact, a fortiori such orders should not be subjected to judicial review to the extent of examining the evidence which supports the conclusions reached by the administrative body.

3. If there is to be judicial review of the Secretary's finding that review should be narrowly limited

The order here involved fixes minimum prices which handlers are required to pay producers for milk. Those minimum prices are fixed under the authority of the statute. If the statute is constitutional, there can be no question of confiscation raised by the order. Cf. St. Joseph Stockyards Co. v. United States, 298 U.S. 38. Certainly no one handling milk in interstate commerce has any constitutional right to buy milk at less than the fixed minimum prices. In the absence of any constitutional issue, the Court, in reviewing the finding made by the Secretary in connection with the issuance of the order, is limited to determining whether or not there was evidence before the Secretary to support his finding. Western Chemical Co. v. United States, 271 U.S. 268; Virginian Railway Co. v. United States, 272 U. S. 658; Tagg Bros. & Moorhead v. United States, 280 U. S. 420; Acker v. United States, 298 U.S. 426; Swayne & Hoyt Ltd. v. United States, 300 U. S. 297; Rochester Telephone Corp. v. United States, No. 481, October Term 1938, decided April 17, 1939.

4. There is no basis in fact for petitioner's argument

Petitioner's argument is premised on the theory that Congress, in seeking to restore the purchasing power of commodities, intended that the Secretary should construct an order which would tend to adjust the blended or combined price of both classes of milk to the level prescribed in the Act, i. e., the "parity level." This view ignores Section 8c (5) (A) which provides that an order may contain provisions "classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each use classification which all handlers shall pay." Congress by thus authorizing different prices for different classes of the commodity has delegated to the Secretary a pricefixing power in connection with each class which is to be exercised in accordance with the standards contained in Section 2 of the Act. This amounts to recognition by Congress that its ultimate aim may be achieved in this manner even though variations in the ratio between the classes may cause a strict comparison of the combined proceeds in the present period with the combined proceeds in the base period to be inapplicable.

Petitioner does not suggest that the Secretary failed to fix the Class I price of milk in a manner that would tend to restore the purchasing power of

that class of the commodity to the parity level. Petitioner does argue that it is possible to reason from the provisions of the order fixing the Class II price that those provisions have no substantial tendency to restore that price to the level sought. This contention ignores the realities of the economic situation in which the order is designed to operate.

The formula fixed in the order for determining the Class II price has as its two basic factors (1) the price of cream in the Boston market and (2) the price of casein (a skim milk product) as quoted at New York—the casein price furnishing a representative value for skim milk (R. Vol. II, 209-210). These two basic factors account for the entire value of whole milk which is used for manufacturing purposes, i. e., the butterfat and the skim milk.

There is no dispute that both the Boston cream price and the New York casein price are fluctuating prices fixed by open competition of cream and casein derived from milk produced in other parts of the United States (R. Vol. II, 210). In fixing the Class II price on the basis of such competitive prices, the Secretary recognized that, as found by the Master, "the products of Class II milk sold in the Boston market must compete with similar products of milk produced in other parts of the United States and shipped into the Boston market" (R. Vol. II, 97).

The price of Class II milk in the Boston market has in the past depended upon economic factors operating in the entire United States and, to a more limited extent, in the world market (R. Vol. II, 97). For a number of years it has been the custom in the Boston market to fix the price of Class II milk on a formula basis, using as a variable the market price of a manufactured product of milk which would reflect competitive conditions (R. Vol. II, 126-129). The Secretary was required to follow this practice in prescribing a formula for computing the Class II price; an order price substantially higher than the level of the price in the unregulated competitive market, would make it impossible to market the surplus milk which was under regulation.

Petitioner, without mentioning the practical necessity for using such a formula, insists that the formula will not tend to cause the price of Class II milk to approach the parity level. The argument is unsound in theory and is based on an unwarrantedly narrow concept of the Act. As pointed out above, the Master has found that Class II price has always been dependent on economic factors operating in the entire United States, and to some extent in the World market (R. Vol. II, 97). Such factors will obviously cause the Class II price to fluctuate with business conditions and make it extremely unlikely that the ratio between that price and other prices will be disparate. The purpose of

the Secretary in establishing the formula was to assure the maintenance of this relationship and precise uniformity in prices paid by handlers.

Furthermore, the parity standard provided in Section 2 (1) of the Act is not the sole standard by which the Secretary must be guided. Additional restrictions are contained in Section 2 (2) which directs the Secretary to carry out the duty of restoring the purchasing power of commodities "by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of current consumptive demand in domestic and foreign markets." By this provision the Secretary is required to give due weight to the economic factors which influence the price at which milk can be sold for manufacturing purposes. It is apparent that the formula prescribed by the Secretary is in accordance with this direction and will, at the same time, tend to restore the Class II price to the parity level.

The fact that the Secretary has fixed the price of each class of milk at a level which tends to cause that price to approach the level that Congress has sought to establish should suffice to satisfy the requirements of the statute. This fact completely destroys the premise from which petitioners' argument proceeds, that is, that Congress established a precise parity level which the blended price must attain. But petitioners' argument is subject to

an even more fatal infirmity. It assumes, on the basis of purely a priori reasoning, that if such a requirement is imposed, the combined proceeds of the two classes of milk will not approach that level. That assumption is demonstrably contrary to fact.

The order has never been permitted to operate in the manner in which it was intended to operate. The refusal of various handlers, and particularly petitioners, to abide by the order has prevented the blended price from attaining the level which it would have attained under complete compliance. To make a comparison of the prices which have been announced during the period that the order has been only partially effective with the parity price level would be to give petitioners the advantage of their own disobedience of the law. It is possible, however, on the basis of the somewhat imperfect information which is available, to make a reasonably accurate estimate of what the blended price would have been if there had been full compliance with the order during each of the five months between its effective date and the commencement of the hearing before the Master. By comparing this estimated price for each month with the parity price for that month it is possible to test the accuracy of petitioners' conclusions. The following table shows the relationship between the parity price and the estimated blended price

under full compliance with the order for the period August through December 1937: "

	average blended price per	Index num- bers of	30th some	20th sone prices all	Amount prices in- cluding all reports below parity	
Month	ewt. plus average dues 1919- 1928 by months	by farmers 1919–1939– 190	parity price	reports in- cluded in eomputa- tion	Dollars	Percent
Aug	\$2-740	83	82. 347	F2. 190	80.005	. 20
Bept	2-833	81	2 296	2.195	. 100	4.3
Oct	2 910	81	2 335	1.38	.000	4.1
Nov	1.003	70	2.443	2.421	6 022	
Dec.	3.000	70	2. 401	2.873	.008	L

The monthly average prices for the base period in the first column of the table are the average prices f. o. b. the 181-200 mile zone for each month during the base period. (The prices stated include the average dues paid cooperative organization in that period. (Vol. II, 103-107).) The index number of prices paid by farmers for each month has been converted to the August 1919-July 1929 base period (Vol. III, 162-163). The blended parity price for each month found in the third column was computed by multiplying the average price for each month by the index number for that month.

The prices in the fourth column were computed on the basis of the total amount of milk reported to the Market Administrator as of April 8, 1938, for each period used in the computation (Vol. II, 190–191). First, the average price was computed by multiplying the amount of Class I milk reported for each month by the Class I price for the 191–200 mile zone from Boston. This Class I price was \$2.6453 and was calculated by subtracting from \$3.01, the price fixed in the order for Class I milk received at plants beyond 80 miles, \$.3647, the necessary adjustment for freight from that zone (Compare zone prices in price announcements—R. Vol.

The accuracy of the method by which the estimated blended prices were computed may be tested by applying the method to amounts of milk which have been used in computing the price according to the method prescribed in the order and comparing the resulting estimated prices with the prices computed pursuant to the order. Such a test demonstrates that there is a variation of less than one percent between the prices computed by each method." In view of this fact, we submit that the

III, 101-120). Second, the total amount of Class II milk reported for each month was multiplied by the average of the Class II prices announced for each period for milk received at stations beyond 80 miles from Boston (R. Vol. III, 101-120). Third, the sum of these two products was divided by the total amount of Class I and Class II milk reported for the month.

The 181-200 mile zone price was selected as the price applicable to the entire market because that zone is about the geographic center of the milk shed (Vol. II, 79). The deduction for cash balance provided in the order was not considered in making these computations because that deduction, if not used, is added back in the following period and, if there were full compliance with the order, would merely result in a revolving fund. It, therefore, could not affect the blended price except for the first period after the order went into effect.

"The following table shows for each delivery period between August 1 and December 31, 1937, the price computed pursuant to the provisions of the order and the price which would be obtained for the same amounts of milk by using foregoing tabulation represents a fair test of the tendency of the order to raise the level of the blended price to that sought to be established by the Act.

It will be noted that in each month the estimated blended price was below the parity level, but at no time was it as much as 5 percent below that level.

Petitioner appears to suggest that this was merely coincidence, but the relationship between the two series of prices is too consistent to be thus lightly dismissed. The fact is that petitioner's

the method of estimation prescribed in the preceding footnote.

	Announced blended price for 191-200 mile zone	Announced price as ad- justed for cash balance deduction	Blerided price as estimated	Difference
Aus. 1-18	\$2,008	/ 22, 138	82.160	80.022
. 16-31.	- 2 126	2.106	2.188	. 023
Sept. 1-15	1.907		. 1.965	018
16-30	- 1.890	1.930	1.942	.012
Det. 1-15	1,877	1.917	1.931	.014
16-31	2 038	2.042	2.056	. 014
Nov. 1-18	2. 237	2. 232	2. 254	. 022
16-80	2, 201	2. 281	2, 306	. 035
Dec. 1-15	/ 2. 272	2.254	2. 274	.000
16-31	2. 135	2.137	2.100	. 023
Average		2.1044	2, 1236	. 0193

In the first column is the announced blended price for the 191-200 mile zone (Vol. III, 101-129). In the second column is the announced blended price as adjusted by the cash balance addition and deduction actually made in the calculation of the blended price (Vol. III, 101-120). In the third column is the estimated blended price. The fourth column represents the error in the estimate. The average error is less than \$0.02 per hundredweight and indicates that the method is over 99 percent accurate. a priori reasoning and fine-spun theories are not sufficient in weight to overcome this empirical proof that the order will tend to raise the level of the blended price to the level which the petitioner asserts the Act seeks to establish.

D. IN TERMINATING THE SUSPENSION OF THE OPERA-TION OF ORDER NO. 4, THE SECRETARY COMPLIED WITH THE STATUTORY REQUIREMENTS

The petitioner in Whiting Milk Company v. United States et al., No. 809, contends that the Secretary of Agriculture failed to comply with the statutory requirements when he terminated his suspension of the operation of Order No. 4. Inasmuch as certain of petitioner's contentions on this point seem likely to create misapprehensions as to the actions of the Secretary of Agriculture and as to the motives which prompted those actions, it is desirable to restate briefly the procedure which the Secretary followed in connection with the issuance and suspension of Order No. 4.

Order No. 4 was originally issued by the Secretary of Agriculture on February 7, 1936, after full compliance with the procedural requirements laid down in the statute (R. Vol. II, 1–36). On July 23, 1936, the District Court for the District of Massachusetts held in *United States of America et al.* v. Buttrick et al., 15 F. Supp. 655; that the provisions of the Agricultural Adjustment Act, under which Order No. 4 has been issued, had been invalidated by the decision of this Court in *United States* v.

Butler, 297 U. S. 1. Thereupon on August 1, 1936, the Secretary of Agriculture suspended the further operation of the order (R. Vol. II, 36-37). In connection with the suspension of the operation of the order, the Secretary of Agriculture made no finding that the order did not tend to effectuate the declared policy of the statute.

On June 16, 1937, the United States Circuit Court of Appeals for the First Circuit reversed the decision of the District Court in the Buttrick case, 91 F. (2d) 66. On June 25, 1937, the Secretary of Agriculture terminated his previous suspension of the operation of the provisions of Order No. 4 (R. Vol. II, 40-41). The termination of the suspension became effective as to a part of the provisions of the order on July 1, 1937, and as to the other provisions of the order on August 1, 1937 (R. Vol. II, 41). Generally speaking, it may be said that the sections of the order, which became effective on July 1, 1937, were the provisions which contained the formal and administrative provisions of the order and not those which imposed positive obligations upon the handlers in the market. In fact, the only provisions becoming effective on July 1, 1937, which imposed any important obligations upon handlers, were the provisions of Article 5 authorizing the Market Administrator to require certain reports. The provisions of the order which were to become effective on August 1, 1937, were the substantive and operative provisions of the order, such as those

with respect to prices, equalization payments, the market administration charge, etc.

In terminating his suspension of the order, the Secretary of Agriculture made no contemporaneous express declaration that the termination of the suspension would effectuate the declared purpose of the Act. It is this omission which the petitioner asserts invalidated all of the action which the Secretary has subsequently taken.

On July 28, 1937, the Secretary of Agriculture issued an order amending all of the provisions of Order No. 4 which were to become effective on August 1, 1937 (R. Vol. II, 46-75). This order was made after full hearings, conducted in compliance with the requirements of the statute, and contained an express finding that all of the terms and conditions of the order as amended would tend to effectuate the declared policy of the Act (R. Vol. II, 43-46, 49).

Despite the express finding made by the Secretary that Order No. 4 as amended and all of its terms and conditions would tend to effectuate the declared purpose of the Act, and despite the fact that this finding was made after full hearings and upon the basis of substantial evidence, petitioner contends that Order No. 4 as amended cannot be enforced because when the Secretary terminated his suspension of Order No. 4, he did not make an express declaration that the termination would effectuate the declared purpose of the Act. The re-

spondents submit that petitioners' argument on this point misconstrues the provisions of the statute and involves serious misconceptions as to the nature of the administrative action which is at issue.

1. The statute did not require the Secretary, in the circumstances of this case, to make an express declaration that the termination of the suspension would tend to effectuate the declared purpose of the act

Section 8c (16) (A) of the act provides as follows:

The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

Existence of the power to terminate a suspension of the operation of an order is a necessary implication of the terms of this Section. In the absence of the power to terminate the suspension, there would be no substantial difference between the power to terminate orders and the power to suspend. Yet, the statute makes a clear distinction between the two powers. Petitioner, in effect, concedes existence of the power to terminate a suspension, but asserts that since the termination of a suspension is a kind of "correlative situation" to

a suspension, the Secretary, when he terminates, must make a finding analogous to the one which he is required to make when he suspends; that is to say, a finding that reinstatement of the order will tend to effectuate the declared purpose of the act. Analysis of the pertinent statutory provisions and consideration of the nature of the administrative action involved lend no support to this construction of the Act. The finding which the Secretary is required to make before he suspends the operation of an order is not required to be made after a hearing or upon evidence. It is the kind of administrative finding which can hardly be subject to judicial review." The finding is doubtless required in the first place as a standard to guide the Secretary's exercise of discretion. nouncement of the finding does nothing more than disclose the basis upon which the Secretary has acted. When the Secretary terminates the suspension of an order, no similar reasons call for the making of an analogous finding. The mere act of termination, considered as a revocation of the Secretary's previous action, sufficiently discloses the basis upon which he has proceeded. Its effect is to reinstate the Secretary's original finding, made when he issued the order in the first instance, that the order will tend to effectuate the declared purpose of the Act.

⁴⁵ In this respect it is analogous to the other findings and determinations of the Secretary discussed in this brief.

But even if it is assumed that in most situations the Secretary must make a finding as to effectuation of the purpose of the Act when he terminates a suspension, the situation at bar does not call for the application of that rule. The only reason for requiring the Secretary to make such a finding, in connection with the termination of the suspension, is so that the record of administrative action may clearly disclose that he has revoked his prior finding, made at the time of the suspension, that the order did not tend to effectuate the declared purpose of the Act. In this case when the Secretary suspended the operation of Order No. 4, he made no finding that the order did not tend to effectuate the purpose of the Act."

The Secretary having made no prior administrative finding inconsistent with his action in terminating the suspension, no reason existed for his including in the suspension a statement designed to revoke the prior finding.

In any event, in this case it is highly doubtful whether the Secretary when he suspended Order No. 4 and then terminated that suspension pur-

Petitioner admits that this was a defect in the Secretary's prior action in suspending the order, but asserts that it was cured by Section 4 of the Agricultural Marketing Agreement Act of 1937, which ratified and confirmed acts of the Secretary performed in connection with orders issued under the Agricultural Agreement Act. Assuming that this is so, the ratification did not supply the finding which the Secretary had failed to make. Despite the ratification there was no prior administrative finding for him to repudiate or revoke when he terminated the suspension.

ported to exercise the authority conferred upon him by Section 8c (16) (A). It is clear from the terms of that section that the power of terminating and suspending orders which it confers upon the Secretary is to be used when, in his judgment, expressed in a formal finding, the terms of an order will not effectuate the declared purpose of the Act. When the Secretary suspended the operation of Order No. 4 he made no such finding. This omission was deliberate. In fact, the Secretary did not suspend the operation of Order No. 4 because he believed that its terms did not tend to effectuate the purpose of the Act, but because the decision of the District Court in United States v. Buttrick, 15 F. Supp. 655, made enforcement of the Act impossible. When he terminated the suspension of Order No. 4, he did so not because of any change of opinion with respect to the effect of the provisions of Order No. 4 but because the decision of the Circuit Court of Appeals in the Buttrick case had made enforcement possible.

Viewed in this light, the action of the Secretary in suspending the operation of Order No. 4 was not an ordinary exercise of the administrative discretion conferred upon him by Section 16a, but rather an announcement, prompted by the decision of the District Court in the Buttrick case that he would no longer attempt to enforce the order. The existence of the power on the part of the Secretary to make such an announcement is certainly a necessary incident of his duties under the Act. He was under no obligation to attempt to

enforce the order so long as the District Court took the view that the statute under which it was issued was unconstitutional and void. Since he was not required to make a futile attempt at enforcement, it was permissible for him to make an announcement to that effect. And in making that announcement it was unnecessary for him to admit that if enforcement were possible, the terms and provisions of the order would not effectuate the declared purpose of the statute. If the Secretary had the power to make such an announcement, as he clearly must have had, he undoubtedly had the power to revoke it by another announcement cast in the same form.

2. If the statute required the Secretary to make a finding with respect to the reinstatement of Order No. 4, he complied with the statutory requirement.

Petitioner insists that if a finding was required, the finding cannot be supplied by implication. The cases upon which petitioner relies to support this contention have no application to the kind of finding here involved." Certain of those decisions relate to findings which are required to be made after hearing and upon evidence introduced at those hearings and which are subject to judicial review, such findings must be in definite and unequivocal form, if

act under the provisions of Section 8c (16) (A).

^{**} Wichita R. R. & Light Co. v. Public Utilities Commission of Kansas, 260 U. S. 48; Mahler v. Eby, 264 U. S. 32; Atchison, Topeka & S. F. R. R. Co. v. United States, 295 U. S. 193.

the function of judicial review is to be discharged." The decision in Panama Refining Co. v. Ryan, 293 U. S. 388, cited by petitioner, dealt with a situation in which the executive officer had never made any finding or determination to disclose the factual basis for his administrative action. The facts here are different. It can hardly be contended that there was no disclosure of the basis upon which the Secretary was acting. In the order terminating the suspension, the Secretary recited that he had "determined to terminate said order of suspension." (R. Vol. II, 41.) This statement can only mean that it was the Secretary's judgment that reinstatement of the order would tend to effectuate. the declared purposes of the Act. Petitioner suggests, however, that certain of the provisions of the order were reinstated for the purpose of being amended and that therefore the Secretary could not have intended to find that those provisions tended to effectuate the declared purpose of the statute. If this view is correct the Secretary could never reinstate suspended provisions with a view to amending them. Such a construction of the statute would be unreasonable. The fact that the Secretary conceived that amendments to certain provisions would be necessary did not prevent him from finding that reinstatement of the provisions, for the purpose of making those amendments, would tend to effectuate the purpose of the Act. That in sub-

⁴ See page 100, supra.

stance is the determination which the Secretary made here.

Finally, it should be emphasized that when the Secretary issued the order amending Order No. 4, he expressly found that all the terms and conditions of the order as amended would tend to effectuate the declared policy of the Act (R. Vol. II, 49). This finding related not only to the amendments to the order but to all of the provisions of the original order as well which had not been changed by the amendments. If the action of the Secretary in terminating the suspension of Order No. 4 was in any way defective in form, this finding remedied the deficiency.

Petitioner's answer that this finding relates to what was essentially a new order and not to the original order which the Secretary reinstated ignores the realities of the situation. The Secretary's finding was made prior to the date upon which the more important provisions of the original order were to become effective under the Secretary's order of reinstatement; the relationship between the finding and the reinstatement is too obvious for denial. It is apparent that when the Secretary issued the amendments to Order No. 4, and made the finding with respect to the effect of the order as amended, he intended the finding to apply to the reinstatement as well as to the amendment. form of his action may be open to criticism, but in substance it fully complied with the statutory requirements. The petitioner's criticism of the Secretary's procedure is highly technical in character. No suggestion can properly be made that the form of words which the Secretary used when he terminated the suspension, jeopardized petitioner's right in any way. Those rights were fully safeguarded by the hearings and the other procedural steps which the Secretary took before he issued the amendments.

E. THE MARKET ADMINISTRATOR HAS COMPLIED WITH THE PROVISIONS OF THE AMENDED ORDER

Petitioners contend that in each of the delivery periods between August 1, 1937, and December 31, 1937, the Market Administrator, in computing the blended price, improperly included milk of persons who were not producers within the definition contained in the order. That definition follows (Article I, Section 1, R. Vol. II, 59, 60):

"Producer" means any person who, in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the Marketing Area, produces milk and distributes, or delivers to a handler, milk of his own production.

The Master found that in each of the delivery periods between August 1, 1937, and December 31, 1937, some of the milk reported to the Market Administrator was delivered by producers who did not possess a certificate of registration as provided in Section 16A to Section 16I of Chapter 94 of the General Laws of the Commonwealth of Massachu-

setts, and that some of the milk so reported was, in fact, included in the computation of the blended price in each of the delivery periods (R. Vol. II, 177). Petitioners assert that the inclusion of this milk was an illegal deviation from the terms of the order.

Petitioners' contention, if correct, does not affect the validity of the Act or of the order, nor does it afford a basis for denying respondents the relief which they sought below. At the most, it calls for modification of the decree below and not for its reversal. Even if the necessity for correction of the alleged error is granted, the legal obligation of petitioners to obey the Act and the order remains unimpaired.

At the outset of the argument it should be pointed out that petitioners have failed to show that the asserted error inflicted any injury upon them. The Master found that if the Market Administrator had excluded the milk received by, handlers from producers who did not possess certificates of registration,

* * the effect of the exclusion of a part of that milk would have been to raise the blended price for the particular delivery period in which it had been included and the effect of the exclusion of another part of that milk would have been to lower the blended price for the particular delivery period in which the said milk had been included [R. Vol. II, 177].

·Petitioners' attempt to construe this as a find-: ing that the alleged error raised the blended price in some delivery periods and lowered it in others. This is patently an erroneous construction of the finding. The Master did not attempt to do more than to find that in any particular delivery period exclusion of a part of the milk would have tended to raise the price for that period and exclusion of another part of the milk would have tended to lower the blended price for that same period. no finding as to the ultimate effect which these opposite tendencies would have upon the blended price in any delivery period nor did he find that the inclusion of this milk increased the equalization payments required of petitioners, or otherwise affected or injured them in any way. The Master could not properly have made any finding as to an increase or decrease in the blended price because there was no evidence before him as to the total number of producers whose milk was asserted to have been improperly included, or as to whether their milk was included in the computation as Class I or Class II milk. Evidence as to the latter fact is vital because the effect of the inclusion of milk in the computation depends entirely upon whether it is included as Class I or Class II (R. Vol. II, 193-194).

It follows from the nature of the Master's finding that the record is barren of evidence that the asserted error injured petitioners. Evidence that the asserted error "affected" the blended price is not enough. There must be proof that the effect injured petitioners; in the absence of proof of injury petitioners have no legal standing to attack the alleged error. Cusack Co. v. City of Chicago, 242 U. S. 526; Tyler v. Judges of Court of Registration, 179 U. S. 405; Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531.

But even if it is assumed that petitioners are entitled to raise the point, their attack on the Market Administrator's action is without merit. The District Court found that the conduct of the Administrator was "a practical and satisfactory compliance with the order" (R. Vol. I, 124). The record fully supports this conclusion. Indeed, the Secretary of Agriculture and the Market Administrator followed the only conceivable course open to them; had they adopted the policy insisted upon by petitioners, administration of the order would have been impossible.

At the outset, it is important to note that no contention is made that the Market Administrator included in his computations any milk which was produced or handled in unhealthy or unsanitary conditions or any milk which was in any way impure or deleterious. That contention would find no support in the record. All the milk included in the computation of the blended price was delivered to dealers who were licensed to sell fluid milk in the marketing area and at least a part of the milk which was delivered by producers with

out certificates was sold in the marketing area (R. Vol. II, 177). In the absence of evidence to the contrary, it cannot be assumed that the health officers of the Commonwealth of Massachusetts and of the cities and towns in the marketing area would permit milk to be delivered to licensed dealers or sold in the marketing area which, in fact, was produced in unhealthy or unsanitary conditions or which was impure or deleterious.

The Market Administrator acted on the assumption that local health authorities were diligently performing their duties and that if they permitted milk to be delivered to licensed handlers and sold in the marketing area, that milk properly could be regarded as having been produced in conformity with the applicable health regulations.

The issue raised by petitioners' contention hinges on the test which the Market Administrator should have applied to determine whether a farmer was a producer within the meaning of Order No. 4 as amended. The test which the Secretary of Agriculture and the Market Administrator in fact applied was whether the farmer delivered milk to a plant licensed by one or more of the towns or cities in the marketing area for the sale and distribution of fluid milk (R. Vol. II, 174). All of the handlers reporting milk which was included in the computation of the blended price for each delivery period between August 1, 1937, and December 31, 1937, were in fact licensed to sell fluid milk by one or

more of the cities or towns in the marketing area (R. Vol. II, 174-176, Exhibits 12-12E).**

Petitioners, on the other hand, insist that the only test which the Market Administrator could properly apply to determine whether a farmer was a producer within the meaning of the order was the possession by the farmer of a certificate of registration, issued pursuant to Section 16A to Section 16C of Chapter 94 of the General Laws of Massachusetts. Section 16A provides:

Except as provided in section sixteen H, no person shall sell or offer or expose for sale milk produced on a dairy farm, for use or disposal elsewhere than on such farm, unless as to such farm a certificate of registration has been issued by the director under section sixteen C and is in full force and effect; provided, that one who purchases such milk from a dealer registered under section sixteen F and sells or offers or exposes the same for sale shall not be deemed to have

The parties do not agree as to the legal significance to be attached to the licenses, but there is no dispute that the handlers were licensed. The licenses are not printed in the record; they were annexed to the Master's report as Exhibits 12-12E and have been certified to this court as original exhibits (R. Vol. II, 175). The Market Administrator excluded three plants of New England Dairies, Inc., in certain delivery periods in the mistaken belief that they were not approved for the shipment of fluid milk by any local health authority in the marketing area (R. Vol. II, 174). In the court below the respondents conceded that this was error and that the error should be corrected when the blended prices are recomputed. (See Plaintiffs' Proposed Findings of Fact, R. Vol. I, 84-85.)

violated this section unless he knows or has reasonable ground to know that the same was not produced on a farm as to which such a certificate has been issued.

Section 16C of Chapter 94 provides in part:

The director may issue, and may from time to time renew, certificates of registration for dairy farms. No certificate of registration for a dairy farm shall be issued or renewed by the director, except as hereinafter provided, until he has made or caused to be made at least one inspection of said farm within one year prior thereto, and unless said inspection clearly indicates a satisfactory compliance with the uniform minimum requirements for dairy farm inspection established under section forty-two of chapter The director shall accept the inspection reports of milk inspectors and agents of local boards of health within the commonwealth in respect to dairy farms located within or without the commonwealth which have been inspected by them, and, if such reports state that such dairy farms have complied with said minimum requirements. certificates of registration shall thereupon issue.

Section 16H authorizes the Milk Regulation Board of the Commonwealth, under certain conditions, to designate certain additional areas as qualified areas, and further provides that dairy farms located in such areas shall be entitled to certificates of registration without additional inspection. The Board has never exercised the powers vested in it by this section (R. Vol. II, 178).

Section 42 of Chapter 6 referred to in Section 16C establishes a Milk Regulation Board and authorizes it to promulgate rules and regulations, including uniform minimum requirements, for the inspection of dairy farms producing milk for distribution, sale, or exchange in the Commonwealth."

Strictly speaking, the applicable health regulations which control the production of milk are the regulations promulgated by the Milk Control Board and by the local health authorities with respect to the conditions under which milk is to be produced, and not the provisions of Sections 16A to 16 I.⁵² The latter sections are merely a part of the statutory machinery provided to enforce the health regulations which actually prescribe the conditions under which milk is to be produced and handled; they are procedural and not substantive in character. The "regulations" to which the order refers in defining a producer as one "who, in conformity with the health regulations which are ap-

⁵¹ The members of the Milk Regulation Board are the Commissioner of Agriculture, the Commissioner of Public Health, and the Attorney General.

⁵² The Master found (R. Vol. II, 89):

The production and distribution of milk are subject to special sanitary regulations imposed by the New England States and by the local subdivisions thereof. (See General Laws of the Commonwealth of Massachusetts, Chapter 94.) So far as these regulations apply to the production of milk they relate to the cleanliness and ventilation of stables and milk houses; the proper equipment for cooling milk and its use; the health, physical well-being, and cleanliness of cows; and a number of other circumstances

plicable to milk which is sold for consumption as milk in the marketing area, produces milk" are the regulations which prescribe the sanitary conditions in which milk shall be produced and handled.

In their brief petitioners tacitly admit the propriety of this view of the purpose of the definition. They point out that compliance with health regulations increases the cost of producing and handling milk and suggest that the purpose of the definition in the order was to protect farmers who incurred this higher cost from the competition of milk produced at a lower cost in disregard of the health regulations. Assuming this to be true, it follows that the health regulations with which the order was primarily concerned are those which relate to such matters as the cleanliness and ventilation of stables and milk houses, the proper equipment for cooling milk and its use, and the health, physical well-being and cleanliness of cows, etc., because it is those regulations which increase the cost of production. A farmer who produces and handles milk in compliance with those regulations is a producer within the meaning of the order, even though he may not posess a certificate issued in accordance with the provisions of Section 16C. It may well be that possession of such a certificate can properly be regarded as conclusive proof that the possessor has complied with the applicable health regulations. may also be true that a farmer who does not possess such a certificate and who sells milk, or offers 141889 89 11

it for sale within the Commonwealth of Massachusetts, is guilty of an offense under the laws of the Commonwealth regardless of whether his milk has been produced in strict conformity with the health regulations." But for the purposes of Order No. 4, as amended, the possession of such a certificate is not the exclusive test of compliance. Indeed, in the circumstances of this case, possession of such a certificate is not even a practicable or possible test of compliance.

The Master found that although there were records in the State House in Boston, Massachusetts, which purported to disclose the name and town in which the farm was located for each producer to whom a certificate, under Section 16A to Section 16I of Chapter 94 of the General Laws, had been issued and the date of expiration thereof, it was as a practical matter impossible for the Market Administrator to determine from those records and from the information which was available to him. whether or not the producers, whose wilk was reported to him by the various handlers who submitted Form 15 reports for the delivery periods August 1, 1937, to December 31, 1937, did in fact hold the certificates of registration provided for in Section 16A to Section 16I of Chapter 94 of the General Laws (R. Vol. II, 176-177).

produce milk in conformity with the applicable health regulations, but because he has neglected to obtain the certificate which the Commonwealth of Massachusetts has provided. shall be the exclusive test of compliance.

Thus the test which petitioners insist the Secretary of Agriculture and the Market Administrator should have applied is one which is incapable of application and one which would have made administration of the order impossible. On this ground alone the Secretary of Agriculture and the Market Administrator were entitled to reject the test for which petitioners now contend in favor of one which was workable. The Secretary of Agriculture is not compelled to place upon his own words an interpretation which requires an impossibility, cf. Union Pacific Ry. Co. v. Hall et al., 91 U. S. 343, 347; or Carroll County v. Smith, 111 U. S. 556, 565; one which would make enforcement impractical or inconvenient, cf. United States v. Tappan, 11 Wheat. 419, 426; Bird v. United States, 187 U.S. 118, 124; or one which would lead to an absurd consequence, United States v. Katz, 271 U. S. 354, 357; Sorrells v. United States, 287 U.S. 435, 446. Petitioners' construction of the order violates all of these canons of construction; it makes enforcement of the order impossible and not merely impractical and inconvenient; it produces the absurd consequence of construing the provisions of the order as self-destructive.

It is no answer for petitioner to assert that the impossibility here is created by the words of the order and that the Secretary of Agriculture is responsible for those words. A literal reading of the definition of producer in Order No. 4 does not com-

pel acceptance of petitioners' test. The health regulations to which the definition refers are the sanitary regulations with respect to the conditions under which milk is produced and handled, and not the procedural provisions of Massachusetts statutes relating to the possession of certificates. The fact that the definition in Order No. 4 was framed by the Secretary of Agriculture, far from supporting petitioners' contention, is a persuasive reason for its rejection. The Secretary chose the words whose meaning is here in issue. He is the administrative officer charged with the duty of enforcing Order No. 4 as amended. Both considerations give body to the Secretary's rejection of petitioners' interpretation of the definition of "producer" in the order.

The situation calls for the application of the wellestablished principles with respect to the weight to
be attached to administrative interpretation. The
courts attach great importance to the interpretation given to acts of Congress by administrative officers charged with their enforcement." Where,
as here, the officer is construing his own language
and not that of Congress, the force of the rule is
far stronger. See Norwegian Nitrogen Co. v.
United States, 288 U. S. 294, 325. In such a situation there can be no question of deviation from Congressional command. The only issue is whether
the meaning which the administrative officer at-

⁵⁴ See the decisions cited on p. 90, supra.

of a meaning proposed by someone else. Unless the officer's interpretation is manifestly unfair or unreasonable it should be controlling. Certainly the interpretation adopted here by the Secretary should not be rejected by this Court unless it is so patently repugnant to the entire plan and intent of the order that its adoption would jeopardize the purpose the order was intended to achieve. There is no basis for taking that view of the Secretary's interpretation. On the contrary, it was consistent with the plan and spirit of the order and it was the only interpretation which would permit the purpose of the order to be accomplished."

The test which the Secretary of Agriculture and the Market Administrator actually applied to determine whether a farmer was a producer within the meaning of Order No. 4 was whether the farmer delivered milk to a plant which was

The petitioners realizing that their construction of the order would make enforcement impossible suggest that the Secretary could have changed the definition by amendment. Amendment of the order would, of course, have involved the giving of notice, the holding of hearings, the making of findings, etc. And in the instant case the only issue in these proceedings would have been whether the Secretary and the Market Administrator should attempt something which was impossible. The petitioners' suggestion that this was the only course open to the Secretary assumes that he has no power to construe his own words. A regulatory plan which required the Secretary to hold hearings and take evidence whenever he wished to interpret one of the definitions used in the plan would obviously be cumbersome to the point of being impractical.

licensed and approved by one or more of the towns and cities in the marketing area for the shipment and sale of fluid milk. Licenses for the distribution and sale of fluid milk are issued by the towns and cities in the Commonwealth, pursuant to Section 40 of Chapter 94 of the General Laws which provides in part:

No person, except a producer selling milk to other than consumers, or selling not more than twenty quarts per day to consumers, shall deliver, exchange, expose for sale or sell or have in his custody or possession with intent so to do any milk, skimmed milk, or cream in any town where an inspector of milk is appointed, without obtaining from such inspector a license which shall contain the number thereof, the name, place of business, residence, number of vehicles used by the licensee, and the name of each driver or other person employed by him in carrying or selling milk.

Because of the terms of the licenses issued to the handlers and the provisions of the local ordinances

Laws to obtain a permit from the Board of Health of the town, before selling fluid milk therein or delivering it for sale therein. This requirement is imposed by Section 43 of Chapter 94 of the General Laws, as amended in 1935 and 1936. A permit issued under this section may contain such reasonable conditions as the Board of Health deems suitable for protecting the public health, and may be revoked for failure to comply with any of such conditions. There is no evidence that any of the handlers reporting milk which was included in the computation of the blended price did not possess such a permit.

and regulations under which the licenses are issued the Secretary of Agriculture and the Market Administrator were entitled to treat the possession of the licenses as adequate evidence that the milk which the handlers received from farmers and reported to the Market Administrator was produ ed in compliance with the applicable health regulations. The local ordinances and regulations under which the licenses were issued required the handlers to handle and sell milk in accordance with the laws of the Commonwealth. The licenses by their terms required the handlers to comply with the laws of the Commonwealth and the regulations of the local health authorities (R. Vol. II, 89).

Under the provisions of Section 16A to Section 16I, it was unlawful for any dealer to sell or offer to sell any milk produced on a farm which did not

*See a' Exhibits 12-D and 12-E. (Licenses issued by the City of Somerville to Milton Cooperative Dairy Corporation and to New England Dairies, Inc.) These exhibits are not printed in the record but were certified in the court as original exhibits (R. Vol. II, 175).

Board of Health of Somerville; Article VI, Section 1; of the health regulations of the town of Brookline; Rule 96 of the rules and regulations of the city of Chelsea; Chapter XIX, Section 1, of the regulations of the Board of Health of Arlington, Massachusetts. Compare Article I of the Milk, Frozen Desserts and Ice Cream Mix Regulations of the Boston Health Department. (All of these municipal ordinances and regulations were attached to the Master's report as Exhibits 11 to 11–E. They have not been printed in the record but have been certified to this court as original exhibits (R. Vol. II, 175).

have a certificate of registration in full-loror and effect. This was a requirement of the General Laws of the Commonwealth which each handler was required to observe if he was to obtain and keep a license from any local health authority. The Market Administrator was entitled to assume that each handler who had a license from a city or town in the marketing area was complying with the provisions of Section 16A to Section 16L. If the fact was otherwise, no license should have been issued to the handler. As long as the handler continued to possess the license and to sell milk. under color of its possession, the Market Administrater was entitled to presume that the handler was in substantial compliance with Section 16A and all of the other applicable provisions of the general laws. If the handler did not comply with these laws the officers of the city or town which had issued the license had the power to cancel or revoke it." The presumption that the local health

Section 41 of the General Laws of the Commonwealth of Massachusetts provides that a license may be revoked at any time for failure to commit with any regulation of the

Board of Health of the town.

[&]quot; Petitioners' selection that the possession of a license had "no tendency of all to establish that the milk distributed from that plant complies with all the applicable health requirements" disregards the fact that the license could not be obtained, not kept, unless the milk distributed from the plant did comply with all of the applicable health requirements.

authorities would act promptly and vigorously to compel compliance was neither foolish nor unreasonable.

Quite apart from the provisions of the General laws and the regulations instead by the State Milk Control Board, the local ordinances and regulations under which licenses to dealers were insued themselves contained rules with respect to the production and handling of milk. These regulations, like those of the State Milk Control Board, related to the cleanliness and ventilation of milk houses, the proper equipment for cooling milk, the health. physical well being, and cleanliness of cows, and a number of other circumstances (R. Vol. II, 89)." Inasmuch as the lifemses issued to hundlers were conditioned on continued compliance with these local health regulations, and imasmuch as failure to comply could be punished by revocation of the license, the continued possession of the license and the sale and distribution of milk thereunder could likewise properly be regained as evidence of compliance with the health regulations which controlled the production and handling of milk.

[&]quot;See the manicipal undiranness and regulations attached to the Master's report as Exhibits II and II-E and certified to this court as original exhibits (R. Vol. II, 175); for example, Article I, Sections I to 6 of the Hills, France Description and I or Cream Max Regulations of the Boston Health Department; Sections 55 to 71 of the Regulations of the Board of Health of the city of Symmetreille: Article VI, Sections 4 to 11 of the Health Regulations of the town of Brackline.

COMCTABLOR

The respondents respectfully submit that the decree of the District Court should be affirmed.

Respectfully submitted.

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Solicitor General.

THURMAN ARNOLD,

Assistant Attorney General.

HUGH B. Cox.

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JOSEPH G. BLANDI,

Special assistant to the Attorney General.

APRIL 1939.

APPENDIX A

The tables in this appendix are exact reproductions of statistics from the files of the Department of Agriculture which were introduced in evidence as Exhibits 3, 4, 5, and 6 at pages 20-21 of the transcript of the testimony taken at the hearings held December 10, 11, and 12, 1935, prior to the original issuance of Order No. 4. The record of those hearings was attached to the Master's report as Appendix A (R. Vol. II, 6) and is before this Court as an original exhibit (R. Vol. I, 134).

Petitioners, in connection with their argument that the Secretary should have reexamined the available statistical data at the time of issuing the amendments to the order, have pointed to certain tables published by the Department of Agriculture in February 1937 and reproduced as an exhibit in the Master's report (R. Vol. II, 207; Vol. III, 206-209). Petitioners have stated that these tables contain new statistical data which were not available to the Secretary when, on January 25, 1936, he proclaimed the August 1919-July 1929 base period. The error of this statement is demonstrated by comparing the statistics for the years 1909 to 1929, inclusive, which are contained in the following tables with the statistics for the same period which petitioners say did not become available until after January 25, 1936 (R., Vol. III, 206-209). It will be found that the figures are identical.

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APPENDIX B

The appendix to the brief submitted by the petitioner in H. P. Hood & Sons, Inc., et al. v. United States et al., Number 772, discusses the interpretation to be given to Section & (5) (F) of the Agricultural Marketing Agreement Act of 1937. That section follows:

Nothing contained in this subsection (5%) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

The petitioner asserts that the effect of this section is to relieve a cooperative organization of producers from any obligation to make equalization payments under an order issued pursuant to the Act. In the body of its brief the petitioner con-

⁶¹ In its brief filed in *United States of America* v. Rock Royal Cooperative, Inc. et al., No. 771, the appellee Central New York Cooperative Association, Inc., for the first time

tends that as a result of this provision a cooperative can draw from the equalization pool when it is entitled to do so, but refuse to make equalization payments when otherwise the terms of the order would require such payments to be made.

The respondents submit, (1) that the evidence in this case does not entitle petitioner to raise this issue, and (2) that petitioner's construction of Sec-

tion 8e (5) (F) is erroneous.

1. Petitioner is not entitled to raise this issue.—
The fact is that not one of the cooperative organizations in the Boston market has hitherto claimed that it is exempt from the provisions of Order No. 4 as amended because it is a cooperative, or that it is entitled to refuse to make equalization payments by reason of the provisions of Section 8c (5) (F). The record is devoid of any evidence that any cooperative has refused to make equalization payments when called upon to do so, nor is there any evidence in the record that the effect of Section 8c (5) (F) has been to inflict any injury whatsoever upon petitioner; indeed, peti-

makes the same contention. We have pointed out in the Government brief in that case the absence from the record of any evidence to support its contention that it would be able to pay more to its producers if the plan were not operative or were ineffective than it could pay through participation in the equalization pool with the plan in effect. We have pointed out also in that brief that its previous claim that it was exempt from the provisions of the order because it sold only milk from farms owned by it is untenable. The comments in this Appendix demonstrate that its construction of the provisions of Section 8c (5) (F), by which it claims exemption from the plan altogether, a contention neither pleaded nor argued below, and made for the first time in its brief filed in this Court, is equally unsound.

tioner in its brief makes no claim that any such injury in fact has been inflicted or is threatened. The discrimination inherent in the section as it is construed by petitioner is abstract and hypothetical in character and has never had practical consequences in the slightest degree. In these circumstances the petitioner is not entitled to raise the question that this provision of the statute is so arbitrary and unreasonable as to be unconstitutional under the due process clause. As this Court said in Dahnke-Walker Co. v. Bondurant, 257 U.S. 282, 289:

A statute may be invalid as applied to one state of facts and yet valid as applied to another. Poindexter v. Greenhow, 114 U. S. 270, 295; St. Louis, Iron Mountain & Southern Ry. Co. v. Wynne, 224 U. S. 354; Kansas City Southern Ry. Co. v. Anderson, 233 U. S. 325. Besides, a litigant can be heard to question a statute's validity only when and so far as it is being or is about to be applied to his disadvantage. Yazoo & Mississippi Valley R. R. Co. v. Jackson Vinegar Co., 226 U. S. 217; Jeffrey Manufacturing Co. v. Blagg, 235 U. S. 571, 576.

Since "it does not appear that the alleged unconstitutional feature of which he complains has injured him or operated to deprive him of any right under the Federal Constitution" the petitioner has no standing to complain. Gorieb. v. Fox, 274 U. S. 597, 606, and cases cited therein. See also Standard Stock Food Co. v. Wright, 225 U. S. 540, 550, and cases cited therein.

2. Petitioner's construction of Section 8c (5) (F) is erroneous.—The terms of Section 8c (5) (F) do

not relieve cooperative organizations from the obligation to make equalization payments under an order. The section doubtless does permit a cooperative to pay its members less than the blended price payable under an order if the lower payments are called for by the contracts with its members. It may be assumed that it was placed in the statute to give cooperatives that privilege. But nothing in its language requires that it be construed so as to relieve cooperatives of the obligation of making equalization payments and obviously such a construction would make the entire regulatory plan of the Act unworkable and would raise grave doubts as to the constitutionality of the Act. Recognized canons of construction dictate that a construction leading to such results is not to be embraced unless inevitably required by the language of the Act read as a whole.

In most metropolitan marketing areas cooperative erganizations of producers now play an extremely important role in the handling and distribution of milk. This fact is clearly demonstrated by the record here and in *United States of America* v. Rock Royal Cooperative, Inc., et al., No. 771. To permit these large organizations handling large quantities of milk to remain outside of the scope of an order which fixes minimum prices and establishes a market-wide equalization pool would not only have the effect of preventing the order from operating, but would establish a real advantage in favor of cooperatives which, in contrast to the illusory advantage alleged by certain of the appellees in *United States of America* v. Rock Royal

Cooperative, Inc., et al., might raise s questions as to the constitutionality of such and. In markets such as New York and Boston, where the cooperative regarizations handle extremely large quantities of milk, no system of regulation can possibly operate with those organizations beyond its scope. It must be assumed that Congress was aware of this situation and that it did not intend to confer an exemption upon cooperatives which would prevent the system of regulation provided

by the Act from being effective.

Furthermore, if, as the petitioners imply here and as the appellee Central New York Cooperative Association, Inc., urges in the Rock Royal case, cooperatives are exempt from accounting for milk on the bases of minimum class prices and from sharing the surplus burden through the equalization pool, there would be some basis, not present under the order as issued, for the claim of discrimination made in the Rock Royal case on behalf of the proprietary handlers. As has been pointed out in the appellants' brief in that (pp. 130-149), the provisions of Section 8c (5) (F) do not discriminate in favor of cooperatives or put proprietary handlers at a competitive disadvantage. Whatever the cooperative members might save as stockholders by throwing expenses back upon themselves as producers, they lose as producers. On the other hand, if the uniform price were enforced upon cooperatives as handlers, these expenses which they could not pass on to themselves as producers would fall upon them as members of the cooperative handling. enterprise. The expenses must be borne by them either way. Hence any saving which the cooperative might seem to accomplish through its freedom from returning the uniform price is illusory because its members and its producers being the same, they bear the expenses either way. The requirement that proprietary handlers pay the uniform price, on the other hand, merely protects producers selling to such handlers against having thrown back upon them the losses or expenses which the proprietary enterprise incurs through competition. Consequently, as the order operates, the persons who comprise the proprietary handlers, its owners or stockholders bear the expenses, just as the persons who comprise the cooperatives, the producer members, bear its expenses. The basis of competition is a wholly equal one between two different types of handlers. But if the contention of the petitioners and of the Central New York Cooperative should be sustained, there would be a real discrimination in favor of cooperatives. They would be free from the requirement of accounting for their milk at the uniform class prices and free from bearing their share of the burden of the surplus through payments into the equalization fund. the provision should be so construed and so applied, the competitive advantage to the cooperatives, which in such a case would be definitely attributable to the Act, would be a real advantage, arbitrary and discriminatory against proprietary handlers, and would lend real substance to a contention of the proprietary handlers that the Act was unconstitutionally discriminatory. Obviously such a construction is to be awaided unless the language of the Act clearly requires it."

That this is not the case is clear from those portions of the legislative history to which both petitioners and Central New York Cooperative refer to support its claim. The reference is to the Reports submitted by the committees of both Houses of Congress which considered the bill and to a statement made in the course of debate upon the floor of the Senate. The statement in the Committees' reports merely paraphrases the words of the section and affords no support for petitioner's construction. The meaning of the statement made on the floor of the Senate in the course of debate is not altogether free from doubt. The state most was made in the course of the following colleguy (Congressional Record, 74th Congress, First Session. page [1139]:

Mr. Cormania. * * The amendment which we have before us provides that a co-operative association shall not sell its milk

In the case of a bonz fide cooperative which carries its proportionate share of the burden of surplus milk this discrimination might not be unduly great, but such a construction of the statute would permit dealers to escape regulation, by exerting economic pressure upon producers, and thus compelling them to organize into cooperative associations which can be managed and controlled by the dealers in their own interests. An example of this type of organization is the Central New York Co-Operative Association, Inc., appeller in United States v. Rock Royal Co-Operation, Inc., of al., No. 771, which was organized to take advantage of the failure of the classified-price scheme in effect in the State of New York under New York State milk control to include a provision for market-wide equalization. See Government's brief in the Rock Royal case, pp. 195–194.

or products to any hamilers at prices less than those fixed. In New York State there are a great many emperatives that sell their milk directly to consumers. There is nothing in the proposed amendments which provides that the cooperative that sells mult and milk products directly to the consumer shall charge itself with the prices fixed. If this condition shall be allowed to exist, it will be a short time only before the entire fluid market in every city will be taken away from the regular hamilens of milk who are purchasing their supply directly from the producers, as they will be required to pay the prices set by the order. It is further contended that the conperatives, in the absence of a set resale price, and with the exemption I have mentioned, would be able to sell milk at a lower figure, and return to their members the net proceeds of their sales. regardless of what they may be.

A conference was held in Syracuse in February 1934, as I remember. The producers did not agree "upon acceptance of the proposed program or upon any other plan of production adjustment" which included a

processing tax.

Mr. Munery. Mr. President, if the Senator will pardon me, there is no processing tax in this provision. Furthermore, in the case of the particular producers to whom the Senator refers, there is not any obligation upon them to come in under this provision at all. They are free to stay out. If they do not wish to come in and have their condition bettered, and a proper price paid them for their milk, this is a matter of their election. It will not be imposed upon them.

I will make this reservation to that statement. The Senator from Virginia [Mr.

Byrd] the other day offered an amendment with which I am in sympathy practically in its entirety. He pointed out that the powers here given the Secretary of Agriculture authorize him to issue an order on the petition of 50 percent of the handlers. The Senator from Virginia contended, and rightly, that that shut the producers out of a voice in the agreement. I will say now that I am prepared to accept, and I think the chairman of the committee, is prepared to accept, an amendment which will require producer consent as to that. The percentage fixed is two-thirds.

It is apparent that when Senator Murphy referred to producers who were "free to stay out" of the regulatory plan, he did not refer to the provisions of Section Sc (5) (F). His remark was prompted by Senator Copeland's previous statement that certain producers had met at Syracuse in February 1934 and had not agreed upon acceptance of the proposed program. Senator Murphy's rejoinder was obviously intended to emphasize that if the majority of the producers in a given area did not vote for the proposed regulation, no regulation would be imposed. This is clearly indicated by his statement immediately following that he was prepared to accept an amendment to the statute which would require the consent of two-thirds of the producers before an order could be issued.

The language of Section 8c (5) (F) does not bear out petitioner's contention. It is significant that the section provides that the cooperatives may blend the "net proceeds" of all of its sales and make distribution thereof to its producers. The use of the words net proceeds is highly important. It would have been unnecessary for Congress to

use the words "net proceeds" had it meant thereby. merely the aggregate received for the sale of milk, less the costs of marketing and processing as petitioner suggests. The section is permissive in character and no permission was necessary to allow the cooperative to deduct its operating cost. This is particularly so inasmuch as the section goes on to provide that the distribution shall be in accordance with the contract between the association and its members, and such a contract always provides for the deduction of operating expenses. By referring to net proceeds, Congress intended to denote not merely the deduction of operating costs, but also the deduction of the amount of any obligations which the cooperative was legally required to pay to the equalization pool under the provisions of the order.

The settled administration interpretation of the act is also persuasive, especially in view of the reenactment of these provisions without change after
two years of application to cooperatives. If any
ambiguity exists in the act it should be resolved in
favor of the construction given to the act by the
Secretary in issuing Order No. 4 and other orders.
A list of these orders appears supra at p. 87. None
of the orders which provide for equalization pools
exempt cooperative associations. Administrative
interpretation is entitled to great weight when the
court is called upon to construe a statute (See
supra, pp. 86-91).

Central New York Cooperative Association, Inc., premises its argument in part on the use of the word "purchase" in Sections 8c (5) (A) and 8c (5) (B). This argument is based on a narrow interpretation of the word "purchase." The leg-

islative history indicates that the word "purchase" is used in the sense of "acquire by delivery" from producers and should be given its broad meaning of "acquire control over." See House Report No. 1241, pp. 9-10. Section 8c (1) specifically provides that orders shall be applicable to "* ations of producers, and others engaged in the han-That clear provision would be dling meaningless if cooperatives which act as handlers were to be exempted by Section 8c (5). Furthermore, if Congress had intended to treat cooperatives, which are also handlers, merely as agents of producers and to exempt them from the class price requirements and from participation in the equalization pool, the provisions of Section 8c (5) (F) expressly exempting them from the requirement that they return the uniform price to producers would have been wholly unnecessary. The statute should not be construed so as to make any of its provisions futile and meaningless.

In short, the language of the Act does not require the exemption of cooperatives from the minimum price requirements or from participation in the equalization pool and the legislative history does not support the exemption. To read such a broad exemption into the language would make some of the act's provisions wholly meaningless and futile, would make the Act completely unworkable and would throw grave doubt upon its constitutionality. There is no warrant for such a construction and it should be rejected.

UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL ADJUSTMENT ADMINISTRATION

Division of Marketing and Marketing Agreements

ANNOTATED COMPILATION

OF

AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

REENACTING, AMENDING, AND
SUPPLEMENTING THE AGRICULTURAL
ADJUSTMENT ACT, AS AMENDED



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1937

PREFATORY NOTE

This compilation is intended to indicate the present status of legislation by Congress relating to marketing agreements and order regulating the handling of agricultural commodities in interstate and foreign commerce. The Agricultural Marketing Agreement Act of 1937; approved June 3, 1937 (Public, No. 137—75th Congress—Chap. 296, 1st Session), reenacted and amended certain provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders. Related legislation enacted prior to June 3, 1937, is given in the compilation known as "Annotated Compilation of the Agricultural Adjustment Act, as Amended, and Acts Relating Thereto at the Close of the First Session of the Seventy-Fourth Congress, August 26, 1935"; Superintendent of Documents, Washington, D. C.

Throughout the text of this compilation, bold face type is used for the language of the Agricultural Marketing Agreement Act of 1937; light face type is used for the language of the Agricultural Adjustment Act, as amended, as reenacted by the Agricultural Marketing Agreement Act of 1937; italics are used for amendments made by section 2 of the Agricultural Marketing Agreement Act of 1937 to

the Agricultural Adjustment Act, as amended.

The provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are not set out base verba. They are, however, incorporated in the body of the provisions of the Agricultural Adjustment Act, as amended, which they amend. References to the amendatory provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are contained in the annotations.

ANNOTATED COMPILATION OF AGRICULTURAL MARKETING AGREEMENT ACT OF 1937 REENACTING, AMENDING AND SUPPLEMENTING THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED 1

AN ACT

To reenact and amend provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the following provisions of the Agricultural Adjustment Act, as amended, not having been intended for the control of the production of agricultural commodities, and having been intended to be effective irrespective of the validity of any other provision of that act are expressly affirmed and validated, and are reenacted without change except as provided in section 2:

(a) Section 1 (relating to the declaration of emergency);

DECLARATION

It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.2

(b) Section 2 (relating to declaration of policy);

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of Congress-

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for agricultural commodities in inter-state commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect

"DECLARATION OF EMERGENCY

"That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act."

The italicized words were substituted, by sec. 2 (b) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words; "balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will reestablish".

¹ For annotations to the Agricultural Adjustment Act, as amended; for provisions of that act not recnacted by the provisions of the Agricultural Marketing Agreement Act of 1937; and for other acts of Congress relating both to the Agricultural Adjustment Act, as amended, and to the Agricultural Marketing Agreement Act of 1937 see "Annotated Compilation of Agricultural Adjustment Act as Amended and Acts Relating Thereto at the Close of the First Session of the 74th Congress, August 26, 1935"; Superintendent of Documents, Washington, D. C.

² As amended by sec. 2 (a) of the Agricultural Marketing Agreement Act of 1937. The text of sec. 1 of the Agricultural Adjustment Act, as amended, was as follows:

to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August 1909-July 1914. In the case of tobacco and potatoes, the base period shall be the postwar period, August 1919-July 1929.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this

section.

(c) Section 8a (5), (6), (7), (8), and (9) relating to violations and enforcement;

SEC. 8a(5) Any person willfully exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture, and any other person knowingly participating, or aiding, in the exceeding of said quota or allotment, shall forfeit to the United States a sum equal to three times the current market value of such excess, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title.

in any proceeding now pending or hereafter brought in said courts. (7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto isseed pursuant to this title, the Secretary shall have power to institute an investigation and after due notice to such handler, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or

in equity.

The following was deleted by section 2 (c) of the Agricultural Marketing Agreement Act of 1937: ", the provisions of this section, or of".

(9) The term "person" as used in this title includes an individual, partnership, corporation, association, and any other business unit.

(d) Section 8b (relating to marketing agreements);

SEC. 8b. In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of · interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: Provided, That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

(e) Section 8c (relating to orders);

ORDERS

SEC. 8c. (1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

COMMODITIES TO WHICH APPLICABLE

(2) Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores), or to any regional, or market classification of any such commodity or product: Milk, fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning) soybeans and naval stores as included in the Naval Stores Act and standards established thereunder fincluding refined or partially refined oleoresin).

NOTICE AND HEARING

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

FINDING AND ISSUANCE OF ORDER

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

TERMS-MILK AND ITS PRODUCTS

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: Provided, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by

the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered. (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk during a representative period of time.

The word "production" was deleted and the word "marketings" was substituted by section 2 (d) of the Agricultural Marketing Agreement Act of 1937.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the

prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two-full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefore from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for

milk purchased.

- (F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act", engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.
- (G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

TERMS OTHER COMMODITIES

(6) In the case of fruits (including pecans and walnuts but not including apples and not including fruits, other than olives, for canning) and their products, tobacco and its products, végetables (not including vegetables, other than asparagus, for canning) and their products, soybeans and their products, and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin), orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size,

or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to bunden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all

handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period or periods, under a uniform rule based upon the amounts sold by such producers in such prior period as the Secretary determines to be representative, or upon the current quantities available for sale by such producers, or both, to the end that the total quantity thereof to be purchased or handled during any specified period or periods shall be

apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both. to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disrosition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers and handlers.

thereof.

(E) Establishing, or providing for the establishment of, reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

TERMS COMMON TO ALL ORDERS

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade

practices in the handling thereof.

The words "produced or" were deleted by section 2 (e) of the Agricultural Marketing Agreement Act of 1987.

The italicized words were substituted, by section 2 (e) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "production or sales of".

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) providing for the selection by the Secretary of Agriculture. or a method for the selection, of an agency or agencies and defining

their powers and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and

provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amend-

ments to such order.

No person acting as a member of an agency . *ablished pursuant to this paragraph (C) shall be deemed to be acting in an official capacity; within the meaning of section 10 (g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to effectuate the other provisions of such order.

ORDERS WITH MARKETING AGREEMENT

(8) Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection (8) shall become effective until the handlers of not. less than 80 per centum of the volume of such commodity or product. thereof covered by such order have signed such a marketing agreement: Provided, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of

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such commodify for sale in the marketing area specified in such

marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such merketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

ORDERS WITH OR WITHOUT MARKETING AGREEMENT

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative as ociations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 30 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus truits said per centum shall be 50 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sten a marketing agreement relating to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (encluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing arbispecified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursu-

ant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (encept that as to catrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at seast two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representtive period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order. .

MANNER OF RESULATION AND APPLICABILITY

(10) No order shall be issued water this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a market-ing agreement upon which a hearing has been held. No order shall be issued under this title probabiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement.

RECOURSE APPLICATION

(11) (A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof inless the Secretary finds that the issuance of several orders applicable to the respective regional production areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently

with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so for as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give. due recognition to the differences in production and manufacting of such commodity or product in such areas.

COOPERATIVE ASSOCIATION IMPROSESTATION

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any esoperative association of producers, bona fide engaged in murketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such connectative association of producers.

BITALLE AND PROCURE EXPERIES.

(13) (A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

VIOLATION OF OXDER

(14) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than \$50 or more than \$500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, That if the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15).

PETITION BY HANDLER AND REVIEW

(15) (A) Any handler subject to an order may file a written pettion with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, is accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall

be final, if in accordance with law.

(B) The District Courts of the United States (including the Sepreme Court of the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business. are hereby vested with jurisdiction in equity to review such ruling. provided a hill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings have be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

TERMINATION OF ORDERS AND MARKETING AGREEMENTS

(16) (A) The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any prosion thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(B) The Secretary shall terminate any marketing agreement entered into under section 8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a . ajority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: Provided. That such majority have, during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order:

(C) The termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within

the meaning of this section.

PROVISIONS APPLICABLE TO AMENDMENTS

(17) The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.

Milk Prices

(18) The Secretary of Agriculture, prior to prescribing any term is any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain, in accordance with section 2 and section 8e, the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period. The level of prices which it is declared to be the policy of Congress to establish in section 2 and section 8e shall, for the purposes of such agreement, order, or amendment, be such level as will reflect the price of fixeds, the available supplies of such as and other economic conditions which affect market supply and demand, for milk or its products in the marketing area to which the contemplated mar-

keting agreement, order, or amendment relates. Whenever the Secretary ands, upon the basis of the evidence adduced at the hearing required by section 8b or 8c, as the case may be, that the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period as determined pursuant to section 2 and section 8e are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market sup, by and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, making adjustments in such prices.

PRODUCER REFERENDUM

(19) For the purpose of ascertaining whether the issuance of an order is approved or favored by producers, as required under the applicable provisions of this title, the Secretary may conduct a referendum among producers. The requirements of approval or favor under any such provision shall be held to be complied with if, of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. Nothing in this subsection shall be construed as limiting representation by cooperative associations as provided in subsection (12).

(f) Section 8d (relating to books and records);

BOOKS AND RECORDS

Sec. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, to furnish him with such information as he finds to be necessary to enable him to ascertain and determine the? extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the antitrust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports. accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1), of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or

This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement Act of 1937.

This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement Act of 1937.

such handler or (3) of any subsidiary of any such party, handler,

or person.

(2) Notwithstanding the provisions of section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a number of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

(g) Section 8e (relating to determination of base period);

DETERMINATION OF BASE PERIOD

SEC. Se. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period, August 1919 July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.

(h) Section 10 (a), (b) (2), (c), (f), (g), (h), and (i) (miscellaneous provisions);

MISCELLANEOUS

Sec. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations; Provided, That no salary in excess of \$10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title; And provided

further, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. /Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropri-

ations contained in this Act.

(b) (2) 10 Each order issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several District Courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by Any violation of any regulation shall be subject to such

penalty, not in excess of \$100, as may be provided therein.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; . except that, in the case of sugar beets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam.12

(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling.

¹⁰ Sec. 10 (b) (2) of the Agricultural Adjustment Act, as amended.

¹¹ Sec. 2 (g) of the Agricultural Marketing Agreement Act of 1937 deletes the following:

", including regulations establishing conversion factors for any commodity and article processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto".

¹² Sec. 2 (h) of the Agricultural Marketing Agreement Act of 1937 deletes the softence:

"The President is authorized to attach by Executive order any or all such possessions to any internal-revenue collection district for the purpose of carrying out the provisions of this title with respect to the collection of taxes".

processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than \$10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to any person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States

without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: Provided, That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof.

(j) The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this Act (but in nowise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within

the State and the shipment outside the State of the products so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. As used herein, the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nations.\(^{18}\)

(i) Section 12 (a) and (c) (relating to appropriation and expense);

APPROPRIATION

SEC. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for payments authorized to be made under section 8. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions 14 with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the market for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$200,000,000: Provided, That not more than 60 per-centum

of such amount shall be used for either of such industries.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.

(j) Section 14 (relating to separability);

SEPARABILITY OF PROVISIONS

SEC. 14. If any provisions of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

(k) Section 22 (relating to imports);

IMPORTS

Sec. 22. (a) Whenever the President has reason to believe that any one or more articles are being imported into the United States.

²² This italicized subsection was added by sec. 2 (1) of the Agricultural Marketing Agreement Act of 1937.

²⁴ Sec. 2 (4) of the Agricultural Marketing Agreement Act of 1927 deletes the words: "and production addustments".

under such conditions and in sufficient quantities as to render or tend to render ineffective or materially interfere with any program or operation undertaken, or to reduce substantially the amount of any product processed in the United States from any commodity subject. to and with respect to which any program is in operation, under this title, or the Soil Conservation and Domestic Ametment Act, as amended, he shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties and shall be conducted subject to such regulations

as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such limitations on the total quantities of any article or articles which may be imported as he finds and declares shown by such investigation to be necessary to prescribe in order that the entry of such article or articles will not render or tend to render ineffective or materially interfere with any program or operation under-taken, or will not reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title or the Soil Conservation and Domestic Allotment Act, as amended: Provided. That no limitation shall be imposed on the total quantity of any article which may be imported from any country which reduces such permissible total quantity to less than 50 per centum of the average annual quantity of such article which was imported from such country during the period from July 1, 1928, to June 30, 1933, both dates inclusive,

(c) No import restriction proclaimed by the President under this section nor any revocation, suspension, or modification thereof shall become effective until fifteen days after the date of such proclama-

tion, revocation, suspension, or modification.

(d) Any decision of the President as to facts under this section

shall be final.

(e) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended by the President whenever he finds that the circumstances requiring the proclamation or provision: thereof no longer exists, or may be modified by the President whenever he finds that changed circumstances require such modification to carry out the purposes of this section.16

Sec. 2. The following provisions, reenacted in section 1 of this act, are amended as follows: 16

Sec. 3. (a) The Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated

¹⁸ Sec. 5 of Public, No. 461, 74th Cong., approved February 29, 1936, amended sec. 22 of the Agricultural Adjustment Act, as amended, by inserting after the words "this title", wherever they appeared, the words "or the Soil Conservation and Domestic Allotment Act, as amended,"; and by deleting the words "an adjustment", wherever they appeared, and inserting in lieu thereof the word "any".

¹⁶ Subsections (a) to (j) inclusive, of section 2 of the Agricultural Marketing Agreement Act of 1937 are incorporated in the preceding text and in footnotes 2 to 9 inclusive and 11 to 14 inclusive, supra.

by him, upon written application of any cooperative association, incorporated or otherwise, which is in good faith cwned or controlled by producers or organizations thereof, of milk or its . products, and which is bona fide engaged in collective processing or preparing for market or handling or marketing (in the current of interstate or foreign commerce, as defined by paragraph (i) of section 2 of this act), milk or its products, may mediate and, with the consent of all parties, shall arbitrate if the Secretary has reason to believe that the declared policy of the Agricultural Adjustment Act, as amended, would be effectuated thereby, bonafide disputes, between such associations and the purchasers or handlers or processors or distributors of milk or its products, as to terms and conditions of the sale of milk or its products. The power to arbitrate under this section shall apply only to such subjects of the term or condition in dispute as could be regulated under the provisions of the Agricultural Adjustment Act, as amended, relating to orders for milk and its products.

(b) Meetings held pursuant to this section shall be conducted subject to such rules and regulations as the Secretary may.

prescribe.

(c) No award or agreement resulting from any such arbitration or mediation shall be effective unless and until approved by the Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, and shall not be approved if it permits any unlawful trade practice or any unfair method of competition.

(d) No meeting so held and no award or agreement so approved shall be deemed to be in violation of any of the antitrust laws of

the United States.

Sec. 4. Nothing in this act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to, or any provision of, or any act of the Secretary of Agriculture in connection with, any such agreement, license, or order which has been executed, issued, approved, or done under the Agricultural Adjustment Act, or any amendment thereof, but such marketing agreements, licenses, orders, regulations, provisions, and acts are hereby expressly ratified, legalized, and confirmed.

Sec. 5. No processing taxes or compensating taxes shall be levied or collected under the Agricultural Adjustment Act, as amended. Except as provided in the preceding sentence, nothing in this act shall be construed as affecting provisions of the Agricultural Adjustment Act, as amended, other than those enumerated in section 1. The provisions so enumerated shall apply in accordance with their terms (as amended by this act) to the provisions of the Agricultural Adjustment Act, this act, and other provisions of law to which they have been heretofore made applicable.

Sec. 6. This act may be cited as the "Agricultural Marketing

Agreement Act of 1937."

UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL ADJUSTMENT ADMINISTRATION

COMPILATION OF ORDER NO. 4 REGULATING THE HANDLING OF MILK IN THE GREATER BOSTON, MASS:, MARKETING AREA, WITH THE INCORPORATION OF AMENDMENT NO. 1 OF AUGUST 1937

Order No. 4, issued by the Secretary of Agriculture February 7, 1936, effective 12:01 a. m., E. S. T., February 9, 1936; Amendment issued by the Secretary July 28, 1937, effective 12:01 a. m., E. S. T., August 1, 1937

The findings, made by the Secretary at the time of issuance of Order No. 4 and the amendment to Order No. 4, have been eliminated from this document for the sake of brevity.

ARTICLE I-DEFINITIONS

SECTION 1. Terms.—The following terms shall have the following meanings:

1. "Act" means the Agricultural Marketing Agreement Act of 1937 which reenacts and further amends Public, No. 10, 78d Con-

gress, as amended.
2. "Secretary" means the Secretary of Agriculture of the United States.

8. "Greater Boston, Massachusetts,, Marketing Area", hereinafter called the "Marketing Area", means the territory included within the boundary lines of the cities and towns of Arlington, Belmont, Beyerly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham, Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Winchester, Winthrop, and Woburn, Massachusetts.

4. "Person" means any individual, partnership, corporation, as-

sociation, and any other business unit.

5. "Producer" means any person who, in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the Marketing Area, produces milk and distributes, or delivers to a handler, milk of his own production.

6. "Handler" means any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating, who engages in such handling of milk, which is sold as milk or cream in the Marketing Area, as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in milk and its products.

7. "Market Administrator" means the person designated pursuant

to article II as the agency for the administration hereof.
8. "Delivery period" means the current marketing period from the first to, and including, the fifteenth day of each month, and from the sixteenth to, and including, the last day of each month.

ARTICLE II-WARKET ADMINISTRATOR

Secretary 1. Selection, Removal, and Bond.—The Market Administrator shall be selected by the Secretary and shall be subject to removal by him at any time. The Market Administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

SEC. 2. Compensation.—The Market Administrator shall be entitled to such reasonable compensation as may be determined by the

Secretary.

SEC: 8. Powers.—The Market Administrator shall have power:

1. To administer the terms and provisions hereof;

2. To receive, investigate, and report to the Secretary complaints of violations of the terms and provisions hereof.

SEC. 4. Duties.—The Market Administrator, in addition to the

duties hereinafter described, shall:

1. Keep such books and records as will clearly reflect the transactions provided for herein;

2. Submit his books and records to examination by the Secretary

at any and all times;

3. Furnish such information and such verified reports as the Sec-

4. Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the Market Administrator;

5. Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 15 days after the date upon which he is required to perform such acis, has not (a) made reports pursuant to article V or (b) made payments pursuant to article VIII;

6. Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions

hereof; and

7. Pay, out of the funds provided by article X, (a) the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the Market Administrator, (b) his own compensation, and (c) all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

SEO. 5. Responsibility.—The Market Administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler, or to any other person, for errors in judgment, for mistakes, or for other acts either of commission or omission, except for his own willful misfeasance, malfeasance, or dishonesty.

ABTICLE III-CLASSIFICATION OF MILE

SECTION 1. Sales and Use Classification.—Milk purchased or han-

dled by handlers shall be classified as follows:

1. All milk sold or distributed as milk, chocolate milk, or flavored milk and all milk not specifically accounted for as Class II milk shall be Class I milk; and

2. Milk specifically accounted for (a) as being sold, distributed, or disposed of other than as milk, chocolate milk, or flavored milk and (b) as actual plant shrinkage within reasonable limits shall be Class HI milk.

Sec. 2. Inter-Handler or Non-Handler Sales .- Milk, including skim milk, sold by a handler to another handler or to a person who is not a handler and who distributes milk or manufactures milk products shall be presumed to be Class I milk. In the event that such selling handler, on or before the date fixed for filing reports pursuant to article V, notifies the Market Administrator that such milk, or a part thereof, has been sold or used by such purchaser other than as Class I milk, such milk, or part thereof, shall be classified as Class II milk; provided, that if such selling handler does not, on or before the fifteenth day after the end of the delivery period during which such sale was made, furnish proof satisfactory to the Market Administrator in support of the above notification, such milk or part thereof shall then be classified as Class I milk and so included in the statement rendered to the selling handler pursuant to paragraph 3 of section 1 of article VIII.

ARTICE IV-MINIMUM PRICES

Section 1. Class I Prices to Associations of Producers.—Each handler shall pay any association of producers for Class I milk containing 3.7 percent butterfat not less than the following prices:

1. \$3.31 per hundredweight for such milk delivered from the plant of such association to such handler's plant located not more than

40 miles from the State House in Boston;

2. \$3.26 per hundredweight for such milk delivered from the plant of such association to such handler at a railroad delivery point not

more than 40 miles from the State House in Boston; and
3. If such milk is delivered containing butterfat more or less than 3.7 percent such handler shall add or subtract, as the case may be, a differential for each one tenth of one percent above or below 8.7 percent, which differential is the result of dividing by 330 the cream price used in paragraph I of section 8 of this article.

SEO. 2. Class I Prices to Producers.—Each handler shall pay producers, in the manner set forth in article VIII, for Class I milk

delivered by them, not less than the following prices:

1. \$3.19 per hundredweight for such milk delivered from producers' farms to such handler's plant located not more than 40 miles

from the State House in Boston;

2. \$3,01 per hundredweight for such milk delivered from producers' farms to such handler's plant located more than 40 miles from the State House in Boston, less an amount per hundredweight equal to the freight from the railroad shipping point for such handler's plant to such handler's railroad delivery point in the Marketing Areas Such freight shall be calculated according to applicable rail tariffs for the transportation in carload lots of milk in 40-quart cans and each such can shall be considered to contain 85 pounds of milk;

3. For the purpose of this section the milk which was sold or distributed, during each delivery period, by each handler as Class I milk shall be presumed to have been that milk which was received at such handler's plant located not more than 40 miles from the State House in Boston (a) directly from producers' farms and (b) from the nearest plants located more than 40 miles from the State House

Sec. 3. Class II Prices.—Each hundler shall pay preduces, in the samer set forth in article VIII, for Class II make not less than the -

following prices per hundredweight:

1. In the case of such milk delivered to a hundler's plant located res more than 40 miles from the State House in Buston, a price which the Market Administrator shall calculate as follows: Devide by 28 the weighted average price pir 40-quait can of bottling quality cream in the Beston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is deliv-ered, multiply the result by LL, and add 2.185 times the average of the estations per pound of demestic, 20-30 mesh, casein in bays delivered in carlesed lets at New York, as published by the Oil, Paint. and Drug Reporter during such delivered period, and subtract 42 cents; an

2. In the case of such milk delivered to a hundler's plant located more than 40 miles from the State House in Busion, the price calculated by the Market Administrator, pursuant to paragraph 1 of this

section, minus 6 cents.
Sec. 4. Sales Outside the Marketing Area.—The print to be paid by each lundler to associations of producers or to prearea, in the manner set forth in article VIII, for wilk utilized as Chen I milk outside the Marketing Area, shall be the prime applicable pursuant to sec-tions 1 and 2 of this article adjusted by (a) the difference between such applicable price and the price americand by the Market Admir-estrator as the prevailing price paid by precessors for milk of equiv-less use in the market-where such Char I milk is utilized and (b) the difference between the freight allowane. I wilk is utilized and (b) the iderence between the freight allowence, if any, set forth in pare-raph 2 of section 2 of this article and an assessed upon to the carried freight rate approved by the Interstate Commune Commission for movement of milk in 40-quart cam from the shipping point for the personal of m ping point for the plant where such Ches I stalk is received from pro plant where such Care I much to market where such Clear I milk is sold; read delivery point serving the market where such Clear I milk is utilized is provided, that (1) if the market where such Chea I milk is received less than 10 miles from the plant where such Chea I milk is received from producers, the realized shipping point for such plant shall be from producers, the realized shipping point serving such market, and (2) if the market where such Clean I milk is utalised is located in Burnstable, Physicath, Norfolk, Dulan, and Nuntuclet Georgies, Mis-suchresetts, such handler's mileand delivery my point in the Maristing Area shall be considered to be the milroad de way point serving such

Sur. 5. Publication of Class II Prices.—On or before the fifth day after the end of each delivery period, the Maries Administrator shall publicly announce the Class II price in effect for such delivery princ.

Sucrem 1. Periodic Reports.—On or believe the eighth day after the end of each delivery period, each lamiller shall, except as set forth in section 1 of article VI, with respect to milk or cream which was, during such delivery period, (a) received from producers, (b) received from handlers, or (c) produced by such handler, report to the Market Administrator in the detail and form proscribed by the Market Administrator.

Administrator, as follows:

1. The receipts at each plant from producers who are not hundlers;

2. The receipts at each plant from any other hundler, including any handler who is also a producer;

any handler who is also a producer;

The receipts at each plant from any other hundler, including any handler who is also a producer;

The receipts at each plant from any other hundler; and

 The quantity, if any, preduced by such hundler; and
 The respective quantities of milk which were sold, distributed, or used, including mass to other hundlers, for the purpose of classification pursuant to article III

Sec. 2. Reports as to Producers.—Each lamiller shall report to the Market Administrator:

Market Administrator:

1. Within 10 days after the Market Administrator's request with respect to any producer for when such information is act in the files of the Market Administrator, and with respect to a period or periods of time designated by the Market Administrator, (a) the name and address, (b) the total pseuds of milk delivered, (c) the average betterfut test of milk delivered, and (d) the number of days upon which deliveries were upde; and

2. As soon as possible after first receiving unik from any producer: (a) The name and address of such pseudosse, (b) the date upon which such milk was first received, (c) the plant at which such producer delivered milk, and (d) the plant, if known, at which still producer delivered milk massimately prior to the beginning of delivery to such handler.

delivery to such handler.

Suc. 1. Reports of Proposate to Producers.—Each handler shall submit to the Market Administrator within 30 days after the end of each delivery period his producer payend for such delivery period which shall show for each producer: (a) The total delivery of milk with the average butterfut test thereof and (b) the net amount of each producer's payment, with the prime, deductions, and charges involved.

Suc. 4. On the contract of the prime, deductions, and charges involved.

Suc. 4. Outside Crossa Purchases. Each hundler shall report, as requested by the Market Administrator, his purchases, if stay, of bottling quality effects from handlers who receive no milk from producers, showing the quantity and the source of such and purchase and the cost thereof at Busine.

Sec. 2. Verification of Reports. In water that the Market Administrator may submit worthol reports to the Secretary pursuant to paragraph 3 of section 4 of article II, such handler stull permit the Market Administrator or his agent, during the usual hours of business, to (a) verify the information contained in reports subbusiness, to (a) verify the information contained in reports submitted in accordance with this article and (b) weigh, sample, and but milk for butterfat.

Secreta 1. Application of Provisions.-No provision hereo? shall apply to a handler who is also a producer and who purchases no milk from producers or an association of producers, except that such handler shall make reports to the Market Administrator at such time and in such manner as the Market Administrator may request.

Sac. 2. Wilk Purchased from Producers.—In the case of a handler who is also a producer and who purchased milk from producers, the Market Administrator shall, before making the computations set forth in article VII, (a) exclude from such handler's class I milk up to but not exceeding 90 percent of the quantity of milk produced and sold by him, (b) exclude the milk purchased by him in each class from other handlers, and (c) exclude from his remaining Class II milk the balance of the milk produced and sold by him.

ARTICLE VII DETERMINATION OF UNIFORM PRICES TO PRODUCERS

Secreon 1. Computation of Value of Milk for Each Handler .- For each delivery persod the Market Administrator shall compute, subject to the provisions of article VI, the value of milk sold or used by ach handler, which was not purchased from other handlers, by (a) multiplying the quantity of such milk in each class by the price applicable pursuant to sections 2, 3, and 4 of article IV and (b) adding together the resulting value of each class.

Suc. 2. Computation and Announcement of Uniform Prices. - The Market Administrator shall compute and announce the uniform prices per hundredweight of milk delivered during each delivery period in

the following manner:

1. Combine into one total the respective values of milk, computed pursuant to section 1 of this article, for each handler who made the report as required by section 1 of article V for such delivery period report as required by section 1 of article V for such delivery period. and who made the payments required by article VIII for milk received during the delivery period next preceding but one;

2. Add the total not amount of the differentials applicable pursuant to section 4 of article VIII;

3. Subtract the total amount to be paid to producers pursuant to

paragraph 2 of section 1 of article VIII;

4. Divide by the total quantity of milk which is included in these computations except that milk required to be paid for pursuant to paragraph 2 of section 1 of article VIII;
5. Subtract not less than 4 cents nor more than 5 cents for the

purpose of retaining a cash balance in connection with the payments

set forth in paragraph 3 of section 1 of article VIII;

6. Add an amount which will prorate, pursuant to section 3 of time article, any cash balance available; and

7. On or before the twelfth day after the end of each delivery period mail to all handlers and publicly announce (a) such of these computations as do not disclose information confidential pursuant to the Act, (b) the blended price per hundredweight which is the result of these computations, and (c) the Class II price.

SEC. 3. Provation of Cash Balance.-For each delivery period the Market Administrator shall prorate, by an appropriate addition pursuant to section 2 of this article, the cash balance, if any, in his hands from payments made by handlers for milk received during the delivery period next preceding but one, to meet obligations arising out of paragraph 8 of section 1 of article VIII.

ARTICLE VIII-PAYMENTS FOR MILE

SECTION 1. Time and Method of Payment.—On or before the twenty-fifth day after the end of each delivery period, each handler shall make payment, subject to the butterfat differential set forth in section 3 of this article, for the total value of milk received during such delivery period as required to be computed pursuant to section 1 of article VII, as follows:

1. To each producer, except as set forth in paragraph 2 of this section, at the blended price per hundredweight computed pursuant to section 2 of article VII, subject to the differentials set forth in section 4 of this article, for the quantity of milk delivered by such

producer;

2. To any producer, who did not regularly sell milk for a period of 30 days prior to the effective date hereof to a handler or to persons within the Marketing Area, at the Class II price, in effect for the plant at which such producer delivered milk, for all the milk delivered by such producer during the period beginning with the first regular delivery of such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month;

3. To producers, through the Market Administrator, by paying to or receiving from the Market Administrator, as the case may be, the amount by which the payments made pursuant to paragraphs 1 and 2 of this section are less than, or exceed, the value of milk as required to be computed for such handler pursuant to section 1 of article VII, as shown in a statement rendered by the Market Administrator on or before the twentieth day after the end of such delivery

Sec. 2. Errors in Payments.—Errors in making any of the payments prescribed in this article shall be corrected not later than the date for making payments next following the determination of such

Sno. 3. Butterfat Differential.—If any producer has delivered to any handler during any delivery period milk having an average butterfat content other than 3.7 percent, such handler shall, in making the payments prescribed by paragraphs 1 and 2 of section 1 of this article to such producer, add for each one-tenth of 1 percent of average butterfat content above 2.7 percent or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent an amount per hundredweight which shall be calculated by the Market Administrator as follows: Divide by 33 the weighted average price per 40 quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, subtract 8 cents, and divide the result by 10.

Smo. 4. Location Differentials.—The payments to be made to producers by handlers pursuant to paragraph 1 of section 1 of this

article shall be subject to differentials as follows:

1. With respect to milk delivered by a producer to a handler's plant located more than 40 miles from the State House in Boston, there shall be deducted an amount per hundredweight equal to the freight (considering 85 pounds of milk per can), according to the tariff currently approved by the Interstate Commerce Commission for the transportation, in carload lots of milk in 40-quart cans, to Boston from the zone of location of the handler's plant.

2. With respect to milk delivered by a producer to a handler's plant located not more than 40 miles from the State House in

Bos on, there shall be added 18 cents per hundredweight.

8. With respect to milk delivered by a producer, whose farm is located more than 40 miles, but not more than 80 miles, from the State House in Boston, there shall be added 28 cents per hundred-

weight.

4. With respect to milk delivered by a producer, whose farm is located not more than 40 miles from the State House in Boston, there shall be added 46 cents per hundredweight unless such addition gives a result greater than \$3.19, in which event there shall be added an amount which will give a result of \$3.19.

SEC. 5. Other Differentials.—In making the payments to producers set forth in paragraphs 1 and 2 of section 1 of this article, handlers

may make deductions as follows:

1. With respect to all milk delivered by producers to the plant of handler which is located more than 40 miles from the State House in Boston and which is located more than 2 miles from a railroad shipping point, an amount not greater than 10 cents per hundredweight; provided, that such deduction has been approved and made public by the Market Administrator prior to the time of payment.

2. With respect to milk delivered by producers to a handler's plant which is located more than 14 miles, but not more than 40 miles from the State House in Boston, an amount equal to 10 cents per hundredweight of Class I milk actually sold or distributed in the Marketing Area from such plant, such total amount to be deducted

pro rata on all milk delivered by such producers.

3. With respect to milk delivered by producers to any handler's plant from which the average daily shipment of Class I milk during any delivery period is less than 21,500 pounds, an aggregate amount, pro rated among producers delivering milk to such plant, equal to the difference between the freight to the marketing area at the carload rate and at the less than carload rate for the Class I milk shipped during such delivery period.

ARTICLE IX-MARKETING SERVICES

Section 1. Deductions for Marketing Services.—Except as set forth in section 2, each handler shall deduct an amount not exceeding 2 cents per hundredweight (the exact amount to be determined by the Market Administrator, subject to review by the Secretary) from the payments made direct to producers pursuant to article VIII with respect to all milk delivered to such handler during each delivery period by producers and shall pay such deductions to the Market Administrator on or before the twenty-fifth day after the end of such delivery period. Such monies shall be expended by the Market Administrator for market information to, and for verification of weights, sampling, and testing of milk purchased from, said producers.

SEC. 2. Producers' Cooperative Association.—In the case of producers for whom a cooperative association, which the Secretary determines to be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act". is actually performing, as determined by the Secretary, the services set forth in section 1 of this article, each handler shall make, in lieu of the deductions specified in section 1 of this article, such deductions from the payments to be made direct to such producers, pursuant to article VIII, as are authorized by such producers and, on or before the twenty-fifth day after the end of each delivery period, pay over such deductions to the association rendering such service.

ARTICLE E-EXPENSE OF ADMINISTRATION

SECTION 1. Payments by Handlers.—As his pro rata share of the expense of the administration hereof, each handler, except as set forth in section 1 of article VI, shall, on or before the twenty-fifth day after the end of each delivery period, pay to the Market Administrator a sum not exceeding 2 cents per hundredweight with respect to all milk actually delivered to him during such delivery period by producers or produced by him, the exact sum to be determined by the Market Administrator subject to review by the Secretary; provided, that each handler, which is a cooperative association of producers, shall pay such pro rata share of expense of administration only on that milk actually received from producers at a plant of such association.

Sno. 2. Suits by Market Administrator.—The Market Administrator may maintain a suit in his own name against any handler for the collection of such handler's pro rata share of expense set forth in this article.

ARTICLE XI-EFFECTIVE TIME, SUSPENSION, AND TERMINATION

Secretary 1. Effection Time.—The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to section 2 of this article.

Sec. 2. Suspension and Termination,—Any or all provisions hereof, or any amendment hereto, shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

Sec. 3. Effect.—Unless otherwise provided by the Secretary in the notice of amendment, suspension, or termination of any or all provisions hereof, the amendment, suspension, or termination shall not (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any provisions hereof; (b) release or waive any violation hereof occurring prior to the effective date of such amendment, suspension, or termination; (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to any such violation.

SEC. 4. Continuing Power and Duty.—If, upon the suspension of termination of any or all provisions hereof, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handlers, by the Market Administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination; provided, that any such acts required to be performed by the Market Administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

The Market Administrator, or such other person as the Secretary may designate, (a) shall continue in such capacity until discharged by the Secretary, (b) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the Market Administrator, or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the Market Administrator of

such person pursuant hereto.

SEC. 5. Liquidation After Suspension or Termination.—Upon the suspension or termination of any or all provisions hereof the Market Administrator, or such person as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the Market Administrator's office, and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such suspension of termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the Market Administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

ARTICLE XII-LIABILITY

Secretary 1. Handlers.—The liability of the handlers hereunder is several and not joint and no handlers shall be liable for the default of any other handler.

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MAR 24 1939

CHARLES ELMORE DROPLEY

Nos. 772 & 809

Inthe Supreme Court of the United States

OCTOBER TERM, 1938

H. P. Hood & Sons, Inc., and Noble's MILK COMPANY, PETITIONERS

THE UNITED STATES OF AMERICA AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE

THE WHITING MILK COMPANY, PETITIONER

27

THE UNITED STATES OF AMERICA AND HENRY A.
WALLACE, SECRETARY OF AGRICULTURE

ON PETITIONS FOR WRITE OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENTS

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. -

H. P. HOOD & SONS, INC., AND NOBLE'S MILK COMPANY, PETITIONERS

v.

THE UNITED STATES OF AMERICA AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE

THE WHITING MILK COMPANY, PETITIONER

v.

THE UNITED STATES OF AMERICA AND HENRY A. WALLACE, SECRETARY OF AGRICULTURE

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENTS

Respondents join with petitioners in requesting this Court to grant writs of certiorari to the United States Circuit Court of Appeals for the First Circuit to review the final decrees of the District Court of the United States for the District of Massachusetts entered in these cases, on March 9, 1939, and March 10, 1939, respectively.

136346-39

The decision of the District Court sustained the constitutionality of the Agricultural Marketing Agreement Act of 1937 and the validity of Order No. 4 issued pursuant thereto by the Secretary of Agriculture on February 7, 1936, as amended by a further order issued on July 28, 1937. Petitioners immediately appealed to the Circuit Court of Appeals for the First Circuit and the appeals have been docketed in that court. The petitions for writs of certiorari have been filed in this Court in advance of judgment in the Court of Appeals.

In view of the public importance of the issues presented by petitioners' assignments of error, we respectfully urge that the writs of certiorari be granted at the earliest practical time so that the cases may be heard at this term of the Court.

These cases present to this Court for the first time questions concerning the constitutionality of the Agricultural Marketing Agreement Act of 1937. The cases are two of thirty commenced in October 1937 in the District Court of the United States for the District of Massachusetts. All of the cases were tried together and the District Court ordered similar decrees entered in each case. A number of the other defendants have been allowed appeals to the Circuit Court of Appeals. In addition to these cases, another suit has been commenced against twenty other milk distributors for the purpose of enforcing Order No. 4 as amended.

In connection with the instant suits, it is important to note that approximately \$2,577,000 is now impounded in the registry of the District Court under a temporary injunction issued by that Court on November 30, 1957, as superseded by an order of the Senior Circuit Judge for the First Circuit on December 8, 1937, and sustained, as so superseded, by the Circuit Court of Appeals for the First Circuit on June 24, 1937. Under the terms of the decrees of the District Court entered in these cases. this money is to be distributed to approximately 15,000 dairy farmers in the New England states. However, the District Court, in deference to the opinion of the Circuit Court of Appenls superseding the temporary injunction (H. P. Hood & Sons, Inc., et al. v. United States et al., 97 F. (2d) 677), has stayed its decree pending the final decision of this Court. If respondents are ultimately successful in these cases, the impounded moneys will be distributed in accordance with the decree. The public interest will be served by prompt distribution of these funds.

The importance of the issues involved in these cases is not limited to New England, which is the only area affected by Order No. 4 as amended. At present twenty-seven orders and licenses regulating the handling of milk and milk products are in effect, all of which are dependent on the constitutionality of the Agricultural Marketing Agreement Act of 1937. Twenty-four of these orders and licenses are applicable to different metropolitan areas and three are applicable to the nation as a whole. Litigation is now in progress in regard to

five of the other orders. In one of these cases, the District Court of the United States for the Northern District of New York, on February 23, 1939, declared the Executtural Marketing Agreement Act of 1937 unconstitutional and declared invalid the Order of the Secretary of Agriculture issued thereunder regulating the handling of milk in the New York metropolitan area. A direct appeal to this Court was allowed pursuant to the provisions of the Act of August 24, 1937, on March 21, 1939, United States v. Rock Royal Cooperative, Inc., et al., No. 771, present term.

The constitutional questions involved in the instant cases are in many respects substantially similar to the questions raised by the appeal in United States v. Rock Royal Cooperative, Inc., et al. When a case raising the same or similar questions is before this Court, it has frequently issued a writ of certiorari prior to judgment in a Circuit Court of Appeals. See, for example, White v. Mechanics Securities Corporation, 269 U. S. 283, 299; Royal Insurance Co. v. Fleet Corporation, 280 U. S. 320. 325; Graham & Foster v. Goodcell, 282 U. S. 409, 415; Norman v. B. & O. R. Co., 294 U. S. 240, 243. There is an additional reason why this Court should issue a writ of certiorari in these cases at this time. The Master's report in the instant cases contains detailed findings with respect to the history and practices of the dairying industry in New England and the economic conditions which the Secretary's order is designed to remedy. These findings supply

a detailed economic background which should be of great assistance to this Court in the consideration of the broad constitutional questions raised both in these cases and in the New York case.

The various orders referred to above constitute an essential part of the present agricultural program and in the sections of the country devoted primarily to dairy farming constitute the principal programs operative under Federal farm legislation now in force. In addition, the Act authorizes the Secretary of Agriculture to issue, and he has issued, numerous other orders regulating the handling and marketing of various fruits, vegetables, and kindred agricultural products. It is of vital importance to both the agricultural interests and the Government that there be an early determination of the questions raised by these cases, which affect the validity of this program.

It is respectfully urged that the writs of certiorari be granted and that the cases be heard at the present term of the Court.

> ROBERT H. JACKSON, Solicitor General.

MARCH 1939.

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No.772

Office - Supreme Dourt, U. S.

FILED

MAR 24 1939

CHARLES ELMONE CROPLEY

In the Supreme Court of the Anited States

OCTOBER TERM, 1938.

H. P. Hood & Sons, Inc., and Noble's Milk Company,

PETITIONERS

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THE UNITED STATES OF AMERICA AND
HENRY A. WALLACE, SECRETARY OF AGRICULTURE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT, FIRST CIRCUIT.

MEMORANDUM BY LAWRENCE C. JONES, ATTORNEY GENERAL OF THE STATE OF VERMONT, AS AMICUS CURIAE.

LAWRENCE C. JONES,
Attorney General of the State of Vermont

In the Supreme Court of the United States. October Term, 1938.

H. P. Hood & Sons, Inc., and Noble's Milk Company,

PETITIONERS

97.

THE UNITED STATES OF AMERICA and HENRY A. WALLACE, SECRETARY OF AGRICULTURE

ON PETITION FOR A WRIT OF CEPTIORARI TO THE UNITED STATES CIRCUIT COURT, FIRST CIRCUIT.

MEMORANDUM BY LAWRENCE C. JONES, ATTORNEY
GENERAL OF THE STATE OF VERMONT,
AS AMICUS CURIAE.

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

Comes Lawrence C. Jenes, Attorney General of the State of Vermont, as amicus curiae, and respectfully represents:

That he is informed and believes that in the above entitled cause the petitioners are to file with your Honorable Court on the 24th day of March, 1939, their petition for a Writ of Certiorari to the United States Circuit Court for the First Circuit, in order

that ultimate decision of the matters litigated in said cause may be had as soon as may be:

That he is informed and believes that approximately seventy-five per cent of the annual cash income from all the agricultural sources in the State of Vermont result from dairy products and live stock; and that approximately fifty-one per cent of the dairy products supplied to the Boston milk market are supplied by milk producers in said State.

That he is further informed and believes that in the proceedings had in said a see large sums of money due from milk dealers and/or distributors/ to milk producers in the State of Vermont have been for a long time impounded and unavailable for distribution to the persons entitled thereto, which has resulted in great hardship to producers of milk who depend entirely upon their income therefrom;

And that the speedy ultimate determination of the issues in said cause is of vital importance to the producers of milk and to all parties interested in said cause.

Wherefore, for the reasons aforesaid, it is respectfully submitted that it would be in the interests of the proper administration of justice and in the public interest that the aforesaid petition for a Writ of Certiorari be granted.

Dated at Montpelier, Vermont, this 22nd day of March, 1939.

LAWRENCE C. JONES

Attorney General of the State of Vermont.

FILE COPY

No. 772

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CHARLES ELLUCITE CROPLEY

In the Supreme Court of the United States

OCTOBER TERM, 1938

H. P. Hood & Sons, Inc. and Noble's Milk Company,

PETITIONERS !

2

United States of America and Henry A. Wallace, secretary of agriculture

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR E. FRANK BRANON, INTERVENER

EDWARD F. MERRILL,

Counsel for E. Frank Branon,

Intervener.

In the Supreme Court of the United States

OCTOBER TERM, 1938

H. P. Hood & Sons, Inc. and Noble's Milk Company,

PETITIONERS

v

United States of America and Henry A. Wallace, secretary of agriculture

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR E. FRANK BRANON, INTERVENER

The opinions below, jurisdiction of this Court, questions presented and statute involved in the instant case are stated in the petition for certiorari and in the memorandum filed on behalf of the United States.

STATEMENT

E. Frank Branon, a producer of milk in Fairfield, Vermont, has sold and delivered milk to the petitioner, H. P. Hood & Sons, Inc. for about

twenty-five years (R. Vol. II; p. 224). He was permitted to intervene as a party defendant in the case as representative of all producers selling to the petitioner H. P. Hood & Sons, Inc. (R. Vol. I. p. 68; Vol. II, pp. 224, 225) and participated throughout in the trial. By his answer (R. Vol. I, pp. 68-77) he asserted the unconstitutionality of the Agricultural Marketing Agreement Act of 1937 and the invalidity of Order No. 4 and amendments thereto, alleged that the continued enforcement of the amended Order would cause pecuniary injury to producers selling to H. P. Hood & Sons, Inc., and prayed that the bill of complaint be dismissed. The final decree entered on March 9, 1939 denied the intervener's prayer for relief and commanded and directed the petitioner, H. P. Hood & Sons, Inc. to comply with all the provisions of Order No. 4 as amended on July 28, 1937: The intervener filed his notice of appeal to the Circuit Court of Appeals for the First Circuit on March 9. 1939.

ARGUMENT

We urge that the petition for certiorari be granted. Immediate disposition by this Court of the questions raised in this case will greatly benefit the milk producers of New England. The present litigation over the validity of the Order No. 4 as amended has already been in progress for a year and a half. During that period the defendants in this case and the twenty-seven companion cases have paid into the Registry of the District Court almost three million dollars. That sum has been withheld from the income of dairy producers in

New England with an inevitably detrimental effect upon their economic life. If it is distributed in accordance with the terms of the final decree, 18,000 producers will share in it. If, on the other hand, the decree is reversed, the million and a half dollars deposited by the petitioner H. P. Hood & Sons, Inc. will be available for distribution by it among its 3,800 producers in accordance with the contracts of sale whereby the petitioner agreed to distribute ratably among them the sum it was not required to pay to the Administrator under the terms of the Order as amended. (R. Vol. II, p. 222, Vol. III, pp. 215-226) In the case of the intervener alone, the difference between the total sums the petitioner paid for milk purchased from the intervener and what it is required to pay under its contracts with the intervener if the Order as amended is held invalid amounts to \$300.40 for the period from August 1 through December 31, 1937 (R. Vol. II, p. 225) and amounts to \$1,501.13 for the year and a half during which litigation has been in progress.

The impairment of the purchasing power of farmers which Congress declared created an emergency making imperative the enactment of the Agricultural Marketing Agreement Act of 1937 has been aggravated in the New England area by the deduction from dairy farmers' income and impounding in court of the sums involved in this litigation. Immediate termination of litigation and consequent freeing of those sums for distribution among producers entitled thereto will do much to relieve the economic hardship suffered during the past year and a half.

In the interest of the dairy producers, we submit, the petition for certiorari should be granted.

Respectfully submitted,

Edward F. Merrill, Counsel for E. Frank Branon, Intervener.

SUPREME COURT OF THE UNITED STATES.

Nos. 772, 809 and 865.—OCTOBER TERM, 1938.

H. P. Hood & Sons, Inc., and Noble's Milk Company, Petitioners,

772 · · · · vs.

The United States of America and Henry A. Wallace, Secretary of Agriculture.

Whiting Milk Company, Petitioner, 809 vs.

The United States of America and Henry
A. Wallace, Secretary of Agriculture.

E. Frank Branon, Petitioner,

The United States of America and Henry A. Wallace, Secretary of Agriculture.

On Writs of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[June 5, 1939.]

Mr. Justice REED delivered the opinion of the Court.

These cases involve the constitutionality of the Agricultural Marketing Agreement Act of 1937¹ as applied in an order of the Secretary of Agriculture regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area.

The petitioners, H. P. Hood & Sons, Inc., and Noble's Milk Company of No. 772 and Whiting Milk Company of No. 809, original defendants below, are engaged in handling milk in the marketing area in the current of interstate commerce or in a manner which burdens that commerce. Producers intervened as defendants, petitioner E. Frank Branon on the side of H. P. Hood & Sons and Chester D. Noyes beside the Whiting Company. The respondents, plaintiffs below, are the United States of America and the Secretary of Agriculture. The parties will be referred to as defendants and plaintiffs, respectively.

¹ Act of June 3, 1937, 50 Stat. 246.

It is unnecessary to detail the facts of each case. They are two of many instituted by the plaintiffs to secure obedience to the Order. On October 1, 1937, bills of complaint were filed in the District Court for the District of Massachusetts for the purpose of enjoining Hood & Sons, Noble's Milk Company and Whiting Milk Company from violating the terms of Order No. 4 as amended. A temporary mandatory injunction issued on November 3 1937. A supersedeas followed soon after, conditioned upon payment by the three handlers into the registry of the court of the amounts billed to them by the Market Administrator for equalization charges and marketing services under the Order. Answers to the bills asserted constitutional infirmities in the Act and fatal weaknesses in the Order as amended. A Special Master was charged with the duty of finding the facts in these and similar suits. His report was filed on January 27, 1939. Shortly thereafter, the District Court confirmed the report, sustained both the Act and the Order, and entered a decree for the plaintiffs. The defendants took an appeal to the Circuit Court of Appeals and, after the cases were docketed, filed petitions for writs of certiorari. The writs were granted because important questions of Federal law undecided by this Court were involved and pending appeals in other cases with similar issues were ready for argument.

The pertinent provisions of the Marketing Act have been summarized in *United States* v. *Rock Royal Co-operative*, No. 771, decided today. They will not be repeated here.

Order No. 4, as amended, which the plaintiffs seek to enforce, is the culmination of an extended effort by the Secretary to work out a plan to regulate the marketing of milk in the Boston area. Order No. 4 was originally issued on February 7, 1936, under the Agricultural Adjustment Act.² All steps leading to its issuance were taken. On November 30, 1935, the Secretary gave notice of a public hearing on a proposed marketing agreement and order. Hearings were held. A marketing agreement was tentatively approved which handlers failed to accept. On January 25, 1936, the Secretary found and proclaimed that the purchasing power of milk could not be satisfactorily determined for the pre-war base period from available statistics in the Department of Agriculture, but could for the post-war period. August, 1919, to July, 1929, was declared the base period for the purpose of issuing an order. On February 5,

² Act of May 12, 1933, 48 Stat. 31, as amended August 24, 1935, 49 Stat. 750.

1936, the Secretary made a determination, as required by Section 8c(9), as to the necessity for issuing an order. The President approved the determination, and the Order issued. It remained in effect until August 1, 1936, shortly after the District Court for the District of Massachusetts held that the Act under which the Order was issued was unconstitutional.³ On that day the Secretary suspended the Order for an indefinite time.

After the passage of the Marketing Act, the Secretary, on June 24, 1937, gave notice of a hearing upon proposed amendments to Order No. 4. On the following day he terminated the suspension of the formal and administrative provisions as of July 1, and of the price-fixing provisions as of August 1. Hearings were held. A proposed marketing agreement failed of approval by the handlers. On July 17, 1937, a referendum took place. It will be discussed later at some length because of contentions which question its validity. On July 27, 1937, acting pursuant to Section 8c(9), the Secretary determined that the failure of the handlers to sign tended to prevent effectuation of the declared policy of the Act; that issuance of the proposed amendments to the Order was the only practical means of advancing the interests of milk producers in the area; and that the issuance was approved by over 70 percent of the producers who during May, 1937, were engaged in the production of milk for sale in the area. The President approved the determination. On July 28, 1937, "Order No. 4, Amendment No. 1" issued. In it the Secretary made findings upon the evidence introduced at the hearings upon the proposed amendments and ratified the original findings in so far as they were not in conflict with the new ones. He made no finding or proclamation, as he had in the original Order, that satisfactory statistics were not available for the pre-war period but were for the post-war period. It is not disputed that the latter was used as the base period for the purpose of computing the prices to be used in the amended Order.

This amended Order is based upon the same principles discussed in United States v. Rock Royal Co-operative, No. 771, and companion cases, decided today. It establishes a comprehensive scheme for the regulation of milk handled in interstate or foreign commerce in an area which includes Boston and 36 other cities or towns. A Market Administrator, appointed by the Secretary of Agriculture, is in charge. Producers and handlers are defined, the

³ United States v. David Buttrick Co., 15 F. Supp. 655, reversed in 91 F. 2d 66.

first as any person producing milk in conformity with the health regulations applicable to milk sold for consumption as milk in the marketing area, the second as all, including producers or associations of producers, who engage "in such handling of milk, which is sold as milk or cream in the Marketing Area, as is in the current of interstate commerce or which directly burdens, obstructs or affects interstate or foreign commerce in milk and its products."

There are two use classifications, roughly, fluid and non-fluid. A price is stated for Class I or fluid milk; a formula, based primarily on the price of cream in Boston and casein in New York, is provided for the calculation of the Class II price for each delivery period. Minimum prices determine the value of all the milk delivered by all producers to all the handlers subject to the Order. Except to associations of producers for Class I milk, payment to producers is made at a blended price. The Administrator computes the value of milk for each handler by multiplying the quantities used by him in each class by the class price, and by adding the two results. Then the values for all handlers are combined into one total. Adjustments are made for differentials. The adjusted total is divided by the total quantity of milk. The result is a weighted average price somewhere between the two class prices, known as the "blended price." Each handler pays his producers at the blended price. The amount paid to producers, may be less, or it may be more, than the value of the milk sold by the handler. Equalization is made among handlers. As the Order puts it, after paying his own producers, each handler pays "To producers, through the Market Administrator, by paying to or receiving from the Market Administrator, as the case may be, the amount by which payments made . . . are less than, or exceed, the value of milk as required to be computed for such

The defendants urge that the decree of the District Court should be reversed because of error under the Constitution, under the statute, under the Order itself. It is contended that the equalization provisions of the amended Order violate the due process clause of the Fifth Amendment; that the price fixing features of the Act and Order constitute an invalid exercise of the power to regulate commerce and an invasion of the powers reserved to the states under the Tenth Amendment; and that the Act involves delegation of legislative power. The amendments to the Order are said to be void because an essential finding required by the statute is lacking.

⁴ Only defendant in No. 809 makes this contention.



H. P. Hood & Sons, Inc. et al. vs. United States et al.

The referendum among producers is assailed as improperly conducted. And the defendants in No. 773 raise the point that the Market Administrator failed to comply with the provisions of the amended Order.

Constitutionality. There is nothing to be added to the discussion of the constitutionality of the Act in United States v. Rock Royal Cooperative, No. 771, decided today. The discussion there of the validity of the amended Order, in so far as similar issues are raised in this case, is also determinative.

Order Amended without Finding as to Base Period. Order No. 4, as amended, is the controlling regulation in these cases. As authorized by Section 8e³ it used a post-war period as the base period to determine prices. The finding and proclamation by the Secretary as to the absence of statistics for the pre-war period, available for use, were made for the original issue of Order No. 4 but not for the amendments. Section 8c(17) makes certain sections, including 8e, applicable to amendments of orders. It reads thus? "The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders.

"Defendants contend that this requires a finding and proclamation under Section 8e each time an order which includes a post-war base period is amended in any particular.

Ordinarily the base period of Section 2 is to be used. It is only after a finding that the purchasing power of the commodity during the period fixed in Section 2 cannot be satisfactorily determined from available statistics of the Department of Agriculture that the Secretary by Section 8e is authorized to find and proclaim the post-war base period. By Section 8c(1) the Secretary is authorized to issue "and from time to time amend" orders. Obviously, as a general clause to make all the provisions of sections 8c, 8d and 8e applicable to amendments, Section 8c(17) was adopted. Without it questions would have been pertinent as to the applicability to amended orders of various provisions in these sections. Doubt

^{5&}quot;SEC. Sc. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in suc! marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period. August 1919-July 1823, as all that portion thereof for which the Secretary finds and preclaims that the purhasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture."

would arise as to the power to change the base period after it was once determined. There would seem to be no occasion to review the absence of satisfactory statistics, however, on a proposed amendment which does not involve any change in the base period. The requirement for finding and proclamation in adopting a base period is not intended to force the Secretary to go through a meaningless ritual. A determination of the necessity of using the post-war base period once made and proclaimed satisfies the conditions of sections 8c(17) and 8e for amendments, so long as no amendment is made which involves a change in the base period. This has been the administrative construction where amendments have been made to orders which had utilized a post-war base period. The plaintiffs show this by a series of references to the Federal Register which are not challenged.

Validity of the Referendum. The referendum is shallenged as conducted contrary to the terms of the Act. Section 8c(9)(B) authorizes the Secretary of Agriculture to issue an order, notwithstanding the failure of handlers to approve a marketing agreement, if he makes certain determinations, one of them that the issuance is approved by at least two-thirds of the producers who, during a representative period, "have been engaged in the production of such commodity for sale in the marketing area. ..." Unor Section 8c(19) the Secretary "may conduct a referendum among producers" to ascertain whether two-thirds approve. He restricted voting in the referendum under scrutiny to producers who had delivered milk to a station approved for the shipment of milk to the marketing area and which had shipped milk or cream to the marketing area during the representative period.

It is said that the Secretary by this restriction disregarded the language of the statute as to producers eligible to vote and that the ballot was either accorded to producers not entitled to vote or

⁶ Armstrong Paint & Varnish Works v. Nu Enamel Corp., 305 U. S. 315, 329.

7 "Order No. 2, amended June 5, 1936 (1 Fed. Reg. 549); Order No. 3, amended April 13, 1936 (1 Fed. Reg. 185), and March 29, 1937 (2 Fed. Reg. 616), and March 31, 1939 (4 Fed. Reg. 1404); Order No. 4, amended July 28, 1937 (2 Fed. Reg. 1331), and January 13, 1939 (4 Fed. Reg. 249); Order No. 5, amended March 29, 1937 (2 Fed. Reg. 614); Order No. 7, amended October 24, 1936 (1 Fed. Reg. 1662); Order No. 11, amended November 17, 1936 (1 Fed. Reg. 1979); Order No. 12, amended February 24, 1937 (2 Fed. Reg. 354); Order No. 15, proclamation dated September 10, 1938 (3 Fed. Reg. 2222), amendment dated September 10, 1938 (3 Fed. Reg. 2222); Order No. 20, amended August 15, 1938 (3 Fed. Reg. 2015)."

⁸ The alternative provisions may be disregarded in this case.

denied to qualified producers. Specifically, the following errors are urged: (1) A large number of southern and western producers who delivered to stations shipping cream were not permitted to vote. (2) Many New England or Eastern New York producers voted who delivered to handlers at plants which shipped only cream in the representative period. (3) Many voted who produced milk on farms as to which no certificate of registration had been issued, as required by Sections 16A and 16C of the Massachusetts milk law. (4) A number of approving producers delivered milk to stations which shipped less than 50 percent of their product to the Boston area. (5) Cooperatives cast votes in favor of the amendments to the Order solely through ballots cast by their boards of directors. Inclusion of the southern and western shippers of cream or elimination of any one of the remaining groups might have changed the result of the referendum.

It does not seem profitable to expand each of the contentions of the defendants. The question is simply whether the statute was followed. It seems to us that it was.

The Act does not supply the Secretary with detailed directions as to the manner of holding a referendum. Its language is general. The Secretary "may conduct a referendum among producers." What producers? Those "engaged in the production of [milk] for sale in the marketing area. ... "11 Every producer who voted was so engaged. Each delivered milk to the plant of a handler licensed to distribute and sell fluid milk in the marketing area. The Order is aimed at the handling of milk marketed in the area. The problems to be solved are those engendered by the necessary, yet troublesome, surplus of fluid milk. Every handler to whom the voters delivered contributed to that surplus.

The milk of the southern and western producers outside the milk-shed could not be sent into the marketing area in fluid form, for their handlers were not licensed to sell milk in the area. The station in Indiana, used in the hearings as illustrative of the situation, held a license for the emergency shipments of sweet cream only. The exclusio of the southern and western producers, therefore, was proper. They are located outside the Boston milkshed;

⁹ Mass. Ann. Laws, c. 94, Secs. 12-48.

¹⁰ Sec. 8e (19).

¹¹ Sec. 8e (9) (B) (i),

¹² Mass. Ann. Laws, c. 94, Sec. 40.

they do not produce any part of the burdensome surplus of fluid milk.

There was no error in permitting the remaining groups of producers to vote. That some handlers to whom voting producers delivered milk shipped only cream during the representative period is immaterial. The farmers, it was found, cannot tell when they bring in their milk whether it will be sold by the handlers as milk or cream. As these handlers could have sent the fluid milk to the area, and in most instances did, at times other than the representative period, the milk delivered to them was a potential part of the surplus. The producers who lacked certificates of registration were properly included. Their milk was sold in the area by licensed handlers.13 Nor can it make any difference that less than 50 percent of the milk of some stations was shipped to the marketing area during the representative period. There is nothing in the Act that compels adopting 50 percent as determinative. It was enough that the handlers of these producers did send some part, and could have sent all.

Two cooperatives voted for their members in favor of the amendments to the Order. No poll was taken of the individual producer members. Nor was there any subsequent approval by them of the action taken on their behalf by the cooperatives. Section 8c(12) directs the Secretary to consider the approval or disapproval of cooperatives as the approval or disapproval of members. This is complete authority for the action of the Secretary. He need not require further referendums by cooperatives themselves. Presumably they will vote with an eye to the best interest of their members.

Violation of Order. The decree directs the defendants to pay to the Market Administrator for distribution to the producers through the equalization fund the amounts which he had billed to them under the Order. The defendants H. P. Hood & Sons and Noble's Milk Company contend that the bills include in their computation milk plainly excluded by the terms of the Order because the product of dairies with at the certificates of registration required by Massachusetts General Laws, Chapter 94, Sections 16A et seq. Under these sections no person may sell milk known to have

¹³ Compare the discussion under the next heading, Violation of Or 7.

¹⁴ See United States v. Rock Royal Co-operative, No. 771, decided today, p. 13.

been produced on unregistered farms. It is not disputed that milk from such farms figured in the operation of the equalization pool. The explanation of the plaintiffs is that the Order covers this milk.

The Administrator seeks payment on the basis of all milk received by licensed handlers for use in the Marketing Area. It was found that milk received at a country plant was included in the computation if the Administrator knew the plant was approved for shipment of fluid milk by a city or town of the marketing area. By statute handlers are required to have a license to handle milk in any town where an inspector of milk is appointed and a permit from the local board of health,15 and they must register with the director of the dairying division of the state department of agriculture.16

As the action of handlers forms the ground for the initiation of regulation under the Act17 and for classification, reports, calculation and payment under the Order,18 we conclude that the milk

¹⁵ Mass. Ann. Laws, c. 94, Secs. 40, 43.

¹⁶ Id., Sec. 16F.

¹⁷ Sec. 8c. "(1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as 'handlers.' Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof."

¹⁸ Article III. "Section 1. Sales and Use Classification.—Milk purchased or handled by handlers shall be classified as follows:

[&]quot;1. All milk sold or distributed as milk, chocolate milk, ir flavored milk and all milk not specifically accounted for as Class II milk shall be Class I milk; and

[&]quot;2. Milk specifically accounted for (a) as being sold, distributed, or disposed of other than as milk, chocolate milk, or flavored milk and (b) as actual plant shrinkage within reasonable limits shall be Class II milk."

Article V. "Section 1. Periodic Reports.—On or before the eighth day after the end of each delivery period, each handler shall, except as set forth in section 1 of article VI, with respect to milk or cream which was, during such delivery period, (a) received from producers, (b) received from handlers, or (c) produced by such handler, report to the Market Administrator in the detail and form prescribed by the Market Administrator, as follows:

[&]quot;1. The receipts at each plant from producers who are not handlers;

[&]quot;2. The receipts at each plant from any other handler, including any

handler who is also a producer;

"3. The quantity, if any, produced by such handler; and

"4. The respective quantities of milk which were sold, distributed, or used, including sales to other handlers, for the purpose of classification pursuant to article III."

Article VII. "Section 1. Computation of Value of Milk for Each Handler .-For each delivery period the Market Administrator shall compute, subject to

received by handlers for use in the area is the proper basis of computation. True, the reports are based on the delivery of milk by defined producers but in view of the terms of the Order as a whole, we are of the opinion the milk from unregistered farms must also be reported. The Act and Order regulate marketing. In violating the state health laws by knowingly selling milk from unregistered farms, producers and handlers may risk prosecution by the Massachusetts authorities. Nevertheless, the handlers must conform to the Order. It is the milk handled, not the milk produced, which is determinative. The Administrator was justified in using milk received at an approved plant for computation. It may be added that under the state and town regulations the municipalities in the marketing area, through their control over licenses and permits, have the power to supervise the handlers to see that they comply with the law forbidding sales from unlicensed farms.19

The further contention is made that the Secretary failed to make a finding as to the tendency of the reinstatement of the original Order to effectuate the policy of the Act. This is conceded. The Order was reinstated in part as of July 1, 1937. It was thereafter

the provisions of article VI, the value of milk sold or used by each handler,

which was not purchased from other handlers, by (a) multiplying the quantity of such milk in each class by the price applicable pursuant to sections 2, 3, and 4 of article IV and (b) adding together the resulting value of each class."

Article VIII. "Section 1. Time and Method of Payment.—On or before the 25th day after the end of each delivery period each handler shall make payment, subject to the butterfat differential set forth in section 3 of this article for the total value of milk received during such delivery period as article, for the total value of milk received during such delivery period as required to be computed pursuant to section 1 of article VII, as follows:

"1. To each producer, except as set forth in paragraph 2 of this sec-

1. To each producer, except as set forth in paragraph 2 of this section, at the blended price per hundredweight computed pursuant to section 2 of article VII, subject to the differentials set forth in section 4 of this article, for the quantity of milk delivered by such producer;

12. To any producer, who did not regularly sell milk for a period of thirty days prior to the effective date hereof to a handler or to persons within the Marketing Area, at the Class II price, in effect for the plant at which such producer delivered milk, for all the milk delivered by such producer delivered beginning with the first regular delivery of producer during the period beginning with the first regular delivery of such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month;

"3. To producers, through the Market Administrator, by paying to or

receiving from the Market Administrator, as the case may be, the amount by which the payments made pursuant to paragraphs 1 and 2 of this section are less than, or exceed, the value of milk as required to be computed for such handler pursuant to section 1 of article VII, as shown in a statement rendered by the Market Administrator on or before the twentieth day after the end of such delivery period."

Mass. Ann. Laws, c. 6 and c. 94, Sees. 16A, 16F, 40, 41, 43.

amended after hearings and on July 28, 1937, the Order as amended was promulgated with the finding "That the issuance of the amendment to the order and all of the terms and conditions of the order, as amended, will tend to effectuate the declared policy of the act." We are of the view that this finding cured any omission, if such a finding prior to reinstatement were necessary, as to which we express no opinion. While Order No. 4 was partly in effect prior to this amendment, the finding covered the entire Order No. 4 as amended, and the language of the Order promulgating the amendments is an approval of Order No. 4 as amended, as tending to effectuate the declared policy of the Act.

Other contentions are made which have been considered but they do not seem to require any statement.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

Nos. 772, 809 and 865.—OCTOBER TERM, 1938.

H. P. Hood & Sons, Inc., and Noble's Milk Company, Petitioners,

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The United States of America and Henry A. Wallace, Secretary of Agriculture.

Whiting Milk Company, Petitioner, 809 vs.

The United States of America and Henry A. Wallace, Secretary of Agriculture.

E. Frank Branon, Petitioner, 865

The United States of America and Henry A. Wallace, Secretary of Agriculture. On Writs of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[June 5, 1939.]

Mr. Justice ROBERTS.

I regret that I cannot concur in the Court's disposition of these cases. I find it unnecessary to consider whether the order complied with the terms of the Act or whether the Act or the order deprived the appellees of their property without due process. I am of opinion that the Act unconstitutionally delegates legislative power to the Secretary of Agriculture.

Valid delegation is limited to the execution of a law. If power is delegated to make a law, or to refrain from making it, or to determine what the law shall command or prohibit, the delegation ignores and transgresses the Constitutional division of power between the legislative and the executive branches of the government.

In my view the Act vests in the Secretary authority to determine, first, what of a number of enumerated commodities shall be regulated; second, in what areas the commodity shall be regulated; third, the period of regulation, and, fourth, the character of regulation to be imposed and, for these reasons, cannot be sustained.

The statute is an attempted delegation to an executive officer of authority to impose regulations within supposed limits and according to supposed standards so vague as in effect to invest him with uncontrolled power of legislation. Congress has not directed that the marketing of milk shall be regulated. Congress has not directed that regulation shall be imposed throughout the United States or in any specified portion thereof. It has left the choice of both locations and areas to the Secretary. Congress has not provided that regulation anywhere shall become effective at any specified date, or remain effective for any specified period. Congress has permitted such a variety of forms of regulation as to invest the Secretary with a choice of discrete systems each having the characteristics of an independent and complete statute.

Section 8c(2) provides that the Secretary may make orders in respect of eight specified agricultural products. It embodies no directions as to the specific conditions which shall move him to issue orders affecting each of the named commodities. The same section permits the promulgation of orders applicable to specified regions. It omits any restriction or direction as to the size or location of the area to be affected by a regional order. It leaves the Secretary free to determine when regulation shall become effective, when it shall be terminated throughout the United States or in any portion thereof.

The supposed standards by which the Secretary is to be governed turn out, upon examination, to be no standards whatever. All of the choices mentioned are, according to the Act, to be made if the Secretary has reason to believe, or finds, that his proposed action will "tend to effectuate the declared policy" of the Act.

We turn, therefore, to Sec. 2, which declares the policy of the Congress to be: "through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period", which base period is defined as a period of years antedating the passage of the Act. The section further declares the policy to be worked out through the Secretary to be "To protect the interest of the con-

^{*} See Sec. 8c(3), 8c(4), 8c(16).

sumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish a subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section."

Assuming that any of these proposed ends or aims were in themselves capable of reasonable definition, it is, nevertheless, evident that the Secretary is to form a judgment by balancing a price raising policy against a consumer-protection policy, according to his views of feasibility and public interest.

If then the separate objects to be attained were matters susceptible of a definite finding there would still be the inescapable result that, after such definite finding as to each proposed aim, there must be an exercise of judgment as to the extent to which that aim should be accomplished in the light of other and conflicting aims. And there would still remain the fact that the conclusion might be against any regulation by reason of the Secretary's unrestrained judgment that, in the circumstances, regulation is not "feasible."

Enough has been said to show that a law is to come into being on the basis of the Secretary's sole judgment as to its probable effect upon the milk industry, its probable effect upon the consumer, its probable consonance with the public interest, and its feasibility. The resolution of all such problems is of the essence of law making.

But if, as the Act discloses, the supposed standards whereby the Secretary is to ascertain the elements which are to determine his ultimate decision are themselves so vague that neither he nor anyone can accurately apply them, the unlimited nature of the delegation becomes even clearer.

The first thing the Secretary is permitted to accomplish by regulation, so the statute declares, is the parity in purchasing power of the price to be received by producers with that received in the base period. This parity is to be in terms of things farmers purchase. A moment's reflection will show that any calculation of such parity is impossible. The things farmers purchase, the relative quantities in which they purchase them, and their price in terms of milk, vary from month to month and from year to year. Moreover, the Secretary is not to establish a parity between two past periods

but is to regulate the industry in such fashion as will, in his opinion, produce for the future a parity of the purchasing power of milk with its purchasing power in the base period. The Secretary's conclusion must lie in the realm of hope or opinion and not in that of ascertained fact. The major objective of the Act is in truth to raise prices paid farmers for milk. The upward limit is really left to the Secretary's uncontrolled discretion.

Turn now to another alleged standard which is to control the Secretary's action. He is not to raise prices so fast as to injure the interest of the consumer but is to raise them gradually by correction of the current level at as rapid a rate as he deems to be in the public interest and feasible in view of consumptive demand. It is fair to ask whether this constitutes a standard at all. What is the public interest? Must not Congress acertain and declare it? What is feasible in the way of regulation? Is not this a matter for legislative judgment? How is anyone to tell whether the Secretary has disobeyed the mandate of Congress in these respects?

There is in the Act a further delegation of power. Congress might, although committing to the Secretary's will and judgment the matters above enumerated, have directed him how to regulate the industry if he determined so to do. It might have considered the possible modes of regulation and provided which of them the Secretary should adopt. The Act does no such thing. It leaves to the Secretary the choice of different and mutually exclusive methods of control.

Section 8c(5) applies to orders affecting milk and its products. Section 8c(7) refers to orders affecting any of the commodities named in the Act. The first requires that any order affecting milk must contain one, and may contain others, of seven specified conditions. The second requires that in any order there must be included one, and there may be included others, of four conditions. These sections give the Secretary the choice of three independent programs for raising the price of milk, namely, bargaining with handlers, stabilizing the retail price, or fixing prices to be paid producers. Within each, variation of the widest sort is allowed. Moreover, the Act permits alternative schemes for distributing amongst the producers the dollar value of milk sold in the area to which the Secretary's order applies. The differences between the permissible schemes are not matters of mere detail but are basic and fundamental.

In respect of the choice of method, the only guide is the declaration of policy embodied in Section 2. If the Secretary is of opinion that one method is more likely to raise prices than another he is at liberty to put into the form of an order what is tantamount to a statute prescribing the method of his choice. Thus the Secretary is to decide not only whether there is to be a law but, as well, the nature of the law to be enacted.

What was said concerning unconstitutional delegation of legislative power in Panama Refining Company v. Ryan, 293 U. S. 388, and Schechter Poultry Corp. v. United States, 295 U. S. 495, applies with equal force here. Comparison of the provisions of the Act respecting flue-cured tobacco, which are summarized in Mulford v. Smith, No. 505 of the present Term, with those applicable to milk, will disclose the fundamental difference between the administrative character of the powers delegated in the case of tobacco and the legislative character of those delegated in the case of milk. No authority cited by the Government presents a situation comparable to that here disclosed. It would not be profitable to analyze each of the cases because in each the question of the nature of the statutory standard and its application in the administration of the statute involved depended upon the field which the legislation covers. Where delegation has been sustained the court has been careful to point out the circumstances which made it possible to prescribe a standard by which administrative action was confined and directed. Such a standard, as respects milk marketing, is lacking in the Agricultural Marketing Agreement Act of 1937.

I think that the decree should be reversed.

Mr. Justice McReynolds and Mr. Justice Burner join in this opinion.